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DIGEST OF DECISIONS
OF THE DEPARTMENT OF THE INTERIOR
IN
CASES RELATING TO
THE PUBLIC LANDS

ALSO (PART 2)

TABLES OF CASES REPORTED, CITED, AND OVERRULED;
ACTS OF CONGRESS AND REVISED STATUTES CITED
AND CONSTRUED; CIRCULARS; AND RULES OF
PRACTICE CITED AND CONSTRUED

VOLUMES 1 TO 40, INCLUSIVE

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PART 1

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DIGEST OF LAND DECISIONS.

(VOLUMES 1 TO 40, INCLUSIVE.)

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28. Sections 2339 and 2340, R. S., are part of the general land laws and are not operative in Alaska, except in so far as they relate to mining claims and the rights incident thereto. 26-305

29. The act of September 30, 1890, authorizing incorporated cities and towns to purchase public lands for cemetery and park purposes is applicable in Alaska. 36-264

30. Section 4 of the act of February 1, 1905, granting rights of way for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals within and across the forest reserves of the United States applies to and is operative in forest reserves in Alaska. 40-426

31. By means of special survey the acreage an applicant is entitled to enter in Alaska as a soldiers' additional homestead may be definitely described and separated from the body of the public lands; hence no reason exists why the rule of approximation should be applied in such entries made in said district. 28-149

32. While Congress has made no provision for determining the extent of the claims of the Greco-Russian Church, or the validity of its title thereto, yet the possessory claims of said church have been protected in executive action taken by the State, War, and Treasury Departments, and allowed to remain in the hands of the church; but in the absence of statutory authority the department can not undertake to identify, by survey, the lands of the church and determine the title of the church thereto. 22-330

33. There is no statutory provision authorizing separate and independent proceedings for the survey and identification of church lands, the ownership of which was secured to the resident members of the church by the treaty of cession. 25-481

34. If any of the property held by the Greco-Russian Church has been included within the limits of an Executive reservation, the President has authority to exclude the lands erroneously embraced within such reservation. 22-330

35. All lands owned by the Greco-Russian Church at the time of cession continue the property of the church, without diminution or enlargement. The posses-

sory right subsequently conferred by Congress does not affect lands owned by said church at the time of the treaty, but only extends to public lands occupied as mission stations at the date of such congressional action, not exceeding 640 acres in any one tract. 25-480

36. The jurisdiction of the department over Greco-Russian Church lands, or missionary stations, is limited to excluding the same from entry and acquisition by others under the mining, townsite, or trade and manufacture laws. 25-481

37. Paragraph 24, amended regulations of June 3, 1891, is limited to the consideration of private claims and the claims of the Greco-Russian Church, when asserted adversely to an application to enter lands for townsite purposes. 25-481

38. The jurisdiction of the Secretary of the Interior over the public lands in Alaska is limited to the administration of the mining, townsite, right of way, and homestead laws, and the sale of land for trade or manufacture; and he is without authority to lease land for propagating foxes, or to assume control of land already leased for such purpose. 30-417

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44. Land actually occupied in good faith by natives is reserved from disposition until such time as Congress shall prescribe the terms on which they may acquire title. 13-120; 23-335

45. The protection accorded to the possessory rights of Indians and others by

section 8, act of May 17, 1884, does not apply where settlement was made at a time when the land was included in a public reservation. 26-104

46. The protection extended to possessory rights by section 8, act of May 17, 1884, is limited to lands actually used, occupied, or claimed at the date of said act. 25-212; 28-427

47. Occupancy of land in Alaska and survey thereof under act of May 17, 1884, confer no such right against the United States as will prevent reservation thereof for its own uses. 39-597

48. Under the proviso to section 8, act of May 17, 1884, all rights of possession to lands in Baranof Island, then existing, are protected as against any subsequent disposition or reservation of the lands, and no action should be taken by the Land Department under the departmental order of February 13, 1907, reserving a portion of such lands, that will in any manner disturb rights of possession thereto; but the reservation may be continued pending legislation by Congress defining the particular terms and conditions upon which the possessory claimants may eventually acquire title to the tracts claimed by them, and while so continued the lands covered thereby are not subject to location with soldiers' additional rights. 36-261

49. Neither section 10, act of May 14, 1898, nor any other provision of law respecting proceedings in the courts concerning adverse claims to public lands in Alaska, has the effect to divest the Land Department of its general and exclusive jurisdiction to investigate and determine the mineral or nonmineral character of public lands in that district. 40-534

50. The adverse proceedings provided for by section 10, act of May 14, 1898, are limited to cases of conflict arising between nonmineral claimants only, and have no application to cases of conflict between mining locators on the one hand and agricultural or nonmineral claimants on the other. 40-534

51. The judgment of a court of competent jurisdiction awarding the right of possession as between adverse claimants in a proceeding in accordance with section 10, act of May 14, 1898, as carried into the act of May 3, 1903, is binding upon the

Land Department in so far as the right of possession as between the parties is concerned; but as to anything other than the award of the right of possession, the Land Department is not bound by the decree, and if any of the other matters considered by the court come before the Land Department in a direct proceeding and consideration thereof becomes necessary to a determination of its right or authority to dispose of any of the public lands, its action will not be controlled by the reasoning or conclusions of the court in reaching its judgment. 36-225

52. A survey with a view to purchase under section 12, act of March 3, 1891, will not be approved if it operates as an encroachment upon lands occupied by native villagers. 26-558; 28-535

53. Land upon which is located the fresh-water supply of a native village may be regarded as "actually occupied" by such natives and excluded from entry for purposes of trade and manufactures under the act of March 3, 1891. 26-518

54. A survey with a view to purchase lands as a trading post should not be allowed in such form as to deprive native villagers of free access to the surrounding country. 26-517

55. An entry under section 12, act of March 3, 1891, should not be allowed in such form as to include a trail or roadway between a native village and a harbor landing, long used by the natives to reach said landing, and necessary for free access thereto. 26-512

56. A survey under act of March 3, 1891, should not be allowed to include a waterway used by native villagers for securing a necessary fresh-water supply. 24-312

57. The open, notorious, exclusive, and continuous possession from the date of the act of May 17, 1884, of lands by Indians is notice sufficient to prevent anyone from becoming a *bona fide* purchaser of said lands. 28-427

58. If section 11, act of March 3, 1891, is not such "future legislation" as contemplated in the act of 1884, then lands in actual use and occupancy of Indians are not subject to disposal under the townsite law; and if said section conferred upon the Indians the right to take

title under the townsite law, no other person could lawfully acquire title to such lands, as townsite entry is made solely for the several use and benefit of the occupants of the land entered. 28-427

59. The issuance of patent for a townsite embracing lands occupied by Indians does not convey title to lands in the actual use and occupancy of the Indians or claimed by them at the date of the act of May 17, 1884, so long as such occupancy continues, or authorize the trustee to convey title to the Indian occupants; nor can such lands be subjected to taxation or charged or burdened with any obligation or incumbrance that could not lawfully be imposed upon public lands of the United States. 37-334

60. A railroad company by the construction and maintenance of a line of railroad upon public lands under the right-of-way provisions of the act of May 14, 1898, acquires merely an easement; and where any of the lands traversed by its road are embraced within a townsite and become town lots, the company is not, by reason of its right of way, an "occupant" of such lots within contemplation of section 11 of the act of March 3, 1891, and as such entitled to purchase the same, nor has it any such rights as will prevent other appropriation of the lots subject to the right of way. 37-264

III. Act of March 3, 1891.

61. The right to enter nonmineral land for trade and manufactures is limited to one entry of not exceeding 160 acres of contiguous lands, as nearly as practicable in square form. 13-608

62. The right to purchase lands for trade or manufactures does not extend unconditionally to 160 acres, but only to so much as may be actually occupied for the purposes named, in no case to exceed 160 acres. 20-434; 23-7, 283

63. Entry must be limited to the land possessed and occupied for purposes of trade and manufacture, taken "as near as practicable in a square form." 30-397

64. "To be taken as near as practicable in a square form" means that the land should be laid off as nearly as practicable in square form, but so as not to interfere

with the occupancy of any other qualified person or corporation. 20-434; 23-335

65. The requirement that land shall be taken in "square form" means that the tract should be surveyed in the form of a rectangular equilateral parallelogram, as nearly as the configuration of the land will permit. 23-283

66. Land taken under section 12 must be as nearly as practicable in square form. 23-280; 26-558

67. A survey that does not follow the requirement as to square form will not be approved on the ground that the irregularity in form is necessary in order to exclude swamp land. 23-337

68. Failure to observe the requirement that the land shall be taken as nearly as practicable in square form will not be excused on the ground that the land excluded is valueless. 24-545

69. The Government is not bound, by an erroneous approval of field notes and plat of survey, to issue patent contrary to the provisions requiring land to be taken as nearly as practicable in square form. 23-442

70. On application to purchase under said act the extent of the actual use and occupancy of the land should not be determined on the report of the deputy surveyor alone and prior to the submission of final proof. 24-314

71. The survey of a tract with a view to the purchase must be rejected where the trade or business is entirely prospective and no improvements have been placed on the land. 23-245

72. Claimants must be in possession and occupying the tracts sought to be entered for trade or manufactures at the date of application to have survey made, with such trade or manufactures in actual operation. 23-280

73. Entry for trade and manufactures must be limited to the land possessed and actually occupied for such purpose. 27-451

74. The right of purchase is limited to cases where the land is used for "trade or manufactures," and does not extend to the mere occupancy of land as a fishing place. 29-416

75. The occupancy of land solely for domiciliary purposes, by one engaged in

the business of fishing, is not an occupation of the land for the purposes of "trade or manufactures." 26-568; 28-437

76. The word "trade" is employed in its commercial significance, and Congress, by its use in defining the character of occupancy which would authorize a purchase, did not intend to include thereby lands used for farming, cattle grazing, or fox raising. 26-232

77. An entry for trade and manufacture must be limited to land possessed and occupied for such purposes alone, when taken in square form, and not include lands used for agricultural purposes incidental to the business of the purchaser. 26-305

78. The act contains no authority for the purchase of lands to be used and occupied for railroad purposes. 26-558

79. An application to purchase under section 12 can not be perfected under the proviso to section 10, act of May 14, 1898, if the claim was not authorized by the act of 1891. 27-335; 29-416

80. A survey that embraces tide lands will not be approved, as no title thereto can be acquired under the public-land laws. 26-533

81. Surveys are not authorized in the absence of formal application therefor, verified by affidavit, showing the character, extent, and approximate value of the improvements owned by the claimant. 24-545

82. Directions given that whenever a survey is desired, compliance with the regulations of June 3, 1891, in the matter of written applications and otherwise, shall be exacted in each instance. 26-513

83. A survey under the act is special in character, and there is no authority therefor except as preliminary to a purchase; and before such a survey is made there should be a *prima facie* showing of the right to purchase, and due compliance with the departmental requirements regulating applications for such surveys. 26-232

84. Where a survey with a view to purchase has been made without written application therefor, as required by departmental regulations, and amendment is found necessary, it will not be allowed until due application has been made in

conformity with said regulations; and prior to the execution of such amended survey a deposit of an amount sufficient to defray the expense incident thereto must be made. 26-512

85. On survey with a view to purchase, articles of personal property should not be included in the estimated value of improvements on the land. 26-568

86. The fund available for compensation of a deputy surveyor for surveying a claim is not limited to the deposit made under the estimate furnished by the surveyor general and prior to the instructions to the deputy or the commencement of the survey. 28-433

87. Funds deposited after instructions to the deputy should not be applied in the settlement of his account without notice to the applicant and opportunity for him to present objections to the allowance of the account. 28-433

88. A supplemental showing of improvements made after survey may be accepted in proof of actual occupancy of land applied for where the necessity for such occupancy, the use of the land prior to application, and the good faith of the applicant are manifest. 28-55

89. There is nothing in the act which would preclude one claiming under sections 12 to 14 from giving a mortgage or creating a charge or lien upon the property to obtain money to carry on business thereon, nor that would prohibit giving an option to the holder of such mortgage, charge, or lien, to demand and receive a conveyance of an undivided interest in the property, after patent, in lieu of payment of the moneys due him; and it would not affect the case at all if the holder of such mortgage, lien, or option is an alien. 30-397

90. By the location, occupation, and improvement of agricultural land in Alaska prior to the assertion of a claim thereto by the occupant under the act a superior right thereto is acquired by him as against all others except the United States. 30-397

91. Sections 18 to 21 of the act granting rights of way through the public land have no application to lands in Alaska. 35-297

IV. Act of May 14, 1898.

For adverse claims under section 10, see 49-51 hereof.

92. Regulations of June 8, 1898, concerning homesteads, rights of way, timber, etc. 27-248

93. Regulations of June 13, 1904, relating to homesteads, rights of way, timber, mission claims, etc. 32-424

94. Circular of April 8, 1903, under act of March 3, 1903, relative to homestead entries. 32-90

95. Testimony on final proof may be taken outside of Alaska in case of purchase of lands therein. 27-451; 28-437

96. Where applications to purchase were filed prior to January 21, 1898, and remained pending at the passage of the act, the survey must be considered as approved by the General Land Office before entry can be allowed. 27-627

97. In the disposition of claims initiated under section 10, the survey does not come before the General Land Office for consideration until after the entry is allowed, or upon appeal from rejection of the application. 27-627

98. Rights initiated by survey of land and approval thereof by the surveyor general preliminary to location of soldiers' additional rights under the act of May 14, 1898, and regulations thereunder, are saved and protected by the proclamation including the lands within the limits of the Tongass National Forest, so long as diligently prosecuted toward final entry. 39-598

99. An application to purchase under section 12, act of March 3, 1891, can not be perfected under the proviso to section 10, act of 1898, if the claim under the act of 1891 was not authorized thereby. 27-335; 29-416

100. The provision in section 10 for the protection of rights initiated under the act of March 3, 1891, works no enlargement of said rights as to the area that may be taken or the water front thereof. 27-355

101. In determining the extent of the water front of claims under sections 1 and 10 of said act abutting on navigable waters the measurement should be made along the meanders of the bank or shore. 29-95

102. Tide lands and the lands reserved as a public highway along the shore line are not part of the public domain, and the Secretary is without authority to approve an application for right of way for a wagon road or tramway over such lands and the construction of a pier or wharf thereon. 32-1

103. Section 6, conferring upon the Secretary authority to sell to the owner of a wagon road or tramway not to exceed 20 acres, for terminal facilities at each end of the road, contemplates an absolute fee, and where the lands, at the date applied for, are within a forest reserve, they are not subject to sale under said section, notwithstanding the road or tramway in connection with which they are desired was constructed prior to creation of the reserve. 34-19

104. Applications for permits for use of rights of way within forest reserves on account of wagon roads or tramways, under section 6, come within the jurisdiction and control of the Secretary of Agriculture. 34-19

105. Water-front privileges should not be disturbed by the allowance of tramroad right of way. 29-447

106. The department is without authority to approve an application for permission to occupy a portion of the roadway reservation along the shore line of Alaska for the purpose of a passage over said reservation of an aerial tramway and the erection thereon of buildings to be used in connection with said tramway. 29-684

107. The limitation in the last proviso to section 1, "that no homestead shall exceed 80 acres in extent," applies to the acreage that may be included in a single entry, and does not limit the number of entries that may be made by an assignee of several soldiers' additional rights under section 2306, R. S. 31-441

108. Under the act of March 3, 1903, amending section 1, act of May 14, 1898, a soldiers' additional claim can not be located, along any navigable waters, within 80 rods of any claim theretofore located along such waters under any law whatever. 39-513

109. Where the frontage meander line of a soldiers' additional claim is projected along the shore of navigable waters for a

distance of 160 rods for the boundary of such claim, the claim can not be further extended in the general direction of the shore, but must be cut off at that point and the remaining lines so located as to conform to the requirements of the statute which limit the frontage on the shore to 160 rods and provide for a reservation of 80 rods between locations; but such claim may be further extended in a cardinal direction, if not in the general direction of the shore, beyond the point where the claim departs from the shore line. 39-513

110. The right of way granted by section 2 is "to any railroad company, duly organized under the laws of any State or Territory or by the Congress of the United States," and an organization not a railroad company under the laws of the State wherein it was created is not a railroad company within the meaning of said section. 32-98

111. Under the act as amended March 11, 1908, failure of the Alaska Pacific Railway & Terminal Co. to complete the first 20-mile section of its road within one year after the definite location of said section and to file a map showing the definite location of an additional 20-mile section within the time fixed therefor, constitute a forfeiture of the rights granted to the company, without further action or declaration, and the reservations of lands for such rights of way have therefore become null and void. 37-555

112. The filing of a map showing the definite location of several disconnected fragments of road, amounting to 20 miles in all, none of which is coterminous with the portion of the road theretofore definitely located, is not a compliance with the provisions of the act requiring the filing of maps showing definite location in 20-mile sections. 37-555

ALIEN.

See CONTEST, 419, 551; FILING, 54-57; HOMESTEAD, 178-183; INSANITY, 19-22; MINING CLAIM, 57-68; NATURALIZATION; SETTLEMENT, 203-209.

1. Instructions of June 12, 1883, and January 31, 1884, to foreign-born applicants for public land. 2-194, 195

2. Right of election as to citizenship conferred upon Mexicans only by the treaty of 1848. 1-489

3. May hold realty until office found. 4-565

4. Can acquire no right to public land before filing declaration of intention to become a citizen. 6-98, 615

5. Can acquire no rights by settlement. 1-444, 489; 11-89

6. The disability of alienage is removed when the settler becomes a citizen, and, in the absence of any adverse claim, his right relates back to the date of settlement, though made when he was an alien. 7-229; 10-475

7. Over 21 years of age who enlists in the Army of the United States and is honorably discharged occupies the status of one who has declared his intention to become a citizen. 16-352

8. A mineral entry by an alien is not void, but voidable, and while of record segregates the land from the public domain. 12-345

9. The act of March 2, 1897, in defining and regulating the right of, to acquire real estate in the Territories, has reference only to lands the title to which has passed from the United States, and does not confer upon aliens the privilege of occupying or purchasing mining claims from the Government under the mining laws. 28-178

10. Any restriction placed by section 2, act of March 3, 1887, upon the acquisition of public lands by a corporation in which a part of the stock is owned by persons, corporations, or associations not citizens of the United States, was removed by the act of March 2, 1897. 28-178

11. Can acquire no right to public land before declaration of intention to become a citizen, and subsequent qualification will not relate back to exclusion of intervening adverse right. 10-463; 14-664

12. Right of, who submits homestead proof and receives final certificate relates back to settlement where subsequently naturalized and no adverse rights intervene. 14-568

13. Can acquire no right by settlement, entry, or filing as against a *bona fide* adverse claimant; but the claim of another set up in bad faith to wrong and defraud the settler will not defeat his right

to file declaration of intention and perfect title. 13-242

14. "Foreigner" in section 2134, R. S., forbidding foreigners to go into the Indian country without authority, is used in its ordinary sense, meaning an alien—one born out of the United States, not naturalized, and who owes allegiance to some other government. 36-195

ALIENATION.

See FINAL PROOF, V; PRACTICE, IX, d.

- I. Generally.
- II. Coal land.
- III. Desert land.
- IV. Homestead.
- V. Mining claim.
- VI. Osage land.
- VII. Preemption.
- VIII. Timber culture.
- IX. Timber land.

I. Generally.

1. Not proved by showing the execution of a power of attorney to sell. 9-311

2. Right exists where there has been due compliance with law and final certificate has issued. 1-469;

3-23; 4-136, 350, 544; 5-170, 315, 609, 702; 6-122, 517; 7-368; 17-377

3. The protection afforded by equity to a *bona fide* purchaser without notice extends only to a purchaser who holds the legal title. 11-123

4. One who loans money upon or purchases unpatented land is not an innocent purchaser, but a conditional encumbrancer or purchaser. 13-389

5. Purchaser, after entry and before patent, takes only an equity, and is charged with notice of all defects in the title. 3-23; 5-55,

442; 7-327; 8-46; 9-316, 480, 573; 10-415; 19-363

6. After entry and before patent confers no better title than the entryman had. 2-795;

3-393; 4-347, 570; 5-55, 276, 589; 6-263, 503; 7-236, 287; 8-269, 331, 524; 9-159, 316, 329, 580; 11-123; 17-171

7. While the transferee, after entry and before patent, has no greater right than

the entryman, yet there should be no excessive search for objections to defeat him. 6-606

8. Transferee after final certificate takes only such right as the entryman has, and if the entry be canceled, whatever rights the transferee has are lost and forfeited. 35-227; 36-502

9. The words "for the right of way of railroads," in section 2288, R. S., are not limited to the width of the railroad track, but include space necessary for sidetrack, stockyards, or other purpose incident to the proper business of a railroad as a common carrier. 28-561

10. There is no statutory inhibition against the sale and transfer of the right of purchase accorded by the act of August 7, 1882. (Omaha lands.) 28-183

11. After final proof, but prior to issuance of final certificate, will not defeat the right to a patent where the proof shows due compliance with law. 6-218;

7-292, 455; 8-268; 9-101; 17-366; 25-137

12. After final proof and prior to issuance of final certificate, will not necessarily defeat the right to a patent, though the nonalienation affidavit was not furnished, if the preemptor had in fact complied with the law at the time of making proof and could have then truthfully made such affidavit. 8-486

13. Purchaser of land prior to patent entitled to be heard in defense of the entry. 4-544, 570;

5-22, 170, 276, 589, 603; 6-263, 440, 503, 770; 8-641; 9-481, 561, 576

14. The right of a transferee to be heard in defense of the entry not defeated by the fact that the transfer is not of record. 8-283, 526

15. Where the transferee fails to notify the local officers of his interest, he is not entitled to notice of action affecting the entry. 36-502

16. The right of a transferee to be heard in defense of an entry not defeated by the collusive and fraudulent acts of the entryman. 14-32, 85

17. A transferee claiming under the swamp grant, who has duly notified the Land Department of his interest, is entitled to notice of subsequent proceedings affecting the validity of his title. 14-511

18. Purchaser, prior to patent, not entitled to be heard in contest proceedings against the entry. 1-106

19. A mortgagee, or purchaser, who does not file in the local office notice of his interest can not call in question the validity of proceedings against the entry. 12-462; 13-556; 14-126; 16-47

20. Transferee who files statement in the local office showing his interest in an entry is entitled to notice of all proceedings against the same. 5-603; 8-641; 9-561, 576; 10-566

21. A certified abstract filed in evidence is sufficient notice to the local office of a mortgagee's interest. 15-228

22. A mortgagee whose interest appears should be given notice of all action taken, and, in the absence of such notice, his right to be heard is not defeated by an adverse decision. 15-224; 17-48

23. Equitable consideration will be given to evidence submitted by a transferee in defense of the entry. 8-486, 618, 641

24. Transferee may submit testimony to show that the entryman had complied with the law and not disqualified himself for the execution of the necessary proof of nonalienation. 8-486

25. No authority of law for the substitution of the mortgagee in the place of the entryman. 6-263

26. One who purchases land during the pendency of an appeal involving the validity of the title is charged with notice of the appeal. 10-415

27. A mortgagee is not entitled to plead the status of an innocent purchaser where there is a contest of record at the date of the execution of the mortgage. 14-305

28. Prior to the enactment of section 7, act of March 3, 1891, a transferee had no greater rights than the entryman. 14-87

29. Prior to enactment of section 7, act of March 3, 1891, there was no such thing as an "innocent purchaser" before patent. 13-389

30. A transferee who purchases after judgment of cancellation is not entitled to be heard in defense of the entry on the ground that he had no notice of the cancellation and purchased the land without notice of fraud on the part of the entryman. 13-305; 23-28

31. An entry made in pursuance of section 1, act of October 1, 1890, is not invalidated by an agreement to convey the land covered thereby, made prior to the consummation of the transfer authorized by said act. 22-375

II. Coal Land.

32. Transferee under a coal entry takes no better title than the entryman has, and subject to the subsequent action of the General Land Office. 15-588

33. Sale of land in a coal declaratory statement prior to final proof and entry defeats the right of the claimant to purchase the land, and an entry made in his name must be canceled. 17-351

34. The sale of a claim after the execution of the final proof, but prior to its filing and the payment of the purchase money, does not necessarily warrant the conclusion that the entry was made for benefit of another. 18-382; 26-413

III. Desert Land.

35. A purchase prior to patent of land covered by a desert entry does not make the buyer an "innocent purchaser." 2-25

36. An oral promise to convey, after title, a portion of the land in payment of money advanced for reclamation, does not necessarily call for cancellation of a desert entry. 11-27

37. An agreement to convey title after final proof will not defeat the entry, where entered into after the amendatory act of March 3, 1891, which recognizes the right of assignment, and where the initial entry was in good faith. (See 34-383.) 24-100

38. An agreement subsequent to the initial entry, to convey title to the water supply after final proof, is not ground for cancellation, if it appear that such agreement was afterwards, and prior to final proof, repudiated. 24-100

39. Recognition in the act of March 3, 1891, of the right of assignment of desert entries furnishes no authority for recognizing a right on the part of a desert entryman to enter into an executory contract

to convey the land after patent and to thereafter submit final proof in furtherance of such contract. 34-383

IV. Homestead.

40. Purchaser after commutation and prior to patent takes subject to the action of the land department. 4-347

41. The attempted transfer of a homestead claim before final proof gives the transferee no standing before the department. 10-548

42. Homesteader may, before final certificate, for any purpose not inconsistent with good faith, mortgage his claim. 8-243

43. Assignee of a certificate of soldiers' additional right takes subject to all defects; is not an innocent purchaser. 2-235

44. After due compliance with law, payment of fees, and submission of final proof, but prior to final certificate, does not defeat the right to a patent. 10-142

45. Right is defeated by the sale, prior to final proof, of an undivided half interest, and such defect can not be cured by a reconveyance in the face of a contest charging such illegality. 10-274

46. Homestead right not defeated by a deed prior to survey in adjustment of possessory rights, but revoked before entry when found to cover a part of the homestead claim. 6-95

47. An agreement to convey part of the land after final proof, with possession given under such contract, calls for cancellation of the entry, although the agreement was made in the compromise of a prior contest against the entry. 24-155

48. An agreement between an entryman and an adverse claimant, whereby the entryman, for the purpose of avoiding a contest, undertakes to relinquish a specified part of the land covered by his entry, is not in violation of section 2290, R. S., as amended. 27-711

49. The sale of part of the land settled upon and claimed by a homesteader disqualifies him as an applicant. 23-87

50. The execution of a deed to a half interest in the land covered by a homestead entry, prior to final proof, defeats

the right to patent, though entryman had lived on the land for five years and the grantee under the deed is asserting no claim thereunder. 24-337

51. A homestead entry must be canceled where prior to entry the homesteader verbally agreed to enter the land for town-site purposes, and after entry executed a written agreement to that effect, and rescission of the agreement prior to contest will not operate to relieve the entry of its illegal character. 26-708

52. A written agreement to convey, made prior to final proof, defeats the right of the entryman to perfect his entry. 24-79

53. A written agreement operating as a mere lease of part of the premises and the grant of an easement, which tends to improve and increase the value of the land as a homestead, is not an alienation and no bar to perfection of the entry. 28-155

54. A contract to convey after final proof will not in itself defeat an entry, though it raises a presumption of bad faith. 6-95

55. An agreement to convey part of a homestead after final entry violates section 2290, R. S. 2-55

56. An attempted sale will not warrant cancellation of the entry, but raises a presumption of bad faith. 2-143, 233

57. A written agreement to execute, after acquiring title, a warranty deed to part of a homestead does not affect the entryman's status, as it is illegal, because prohibited by law or by public policy, and can not be enforced; only an absolute conveyance, which can be enforced, defeats his right. (See 15-201.) 2-71

58. A bond for a deed of half the land, conditioned upon payment within three years, is in fraud of the law (sec. 2289, R. S.). 2-97

59. A quitclaim deed executed under duress will be treated as null and void. 2-86

60. A deed executed prior to final proof, in anticipation of death and for the purpose of securing the land to the children, will not defeat the right of the homesteader. 18-251

61. Where a homesteader immediately prior to his death conveys his homestead to his wife, for the purpose of avoiding the expense of settling his estate, the in-

strument, though in form a deed, must be regarded as testamentary in character.

20-428

62. Charge not supported by showing that the entryman executed a deed prior to final proof, where it appears that said instrument was intended as a mortgage to secure the payment of money advanced to the entryman for his personal use and the improvement of his claim. 27-148

63. Quitclaim deed made prior to original entry, for small part of claim, does not impeach good faith. 3-284

64. After issuance of certificate and prior to patent, of a portion of the land, is at the peril of the entryman, for if new proof is necessary claimant will not be able to make the affidavit required by section 2291, R. S. 12-132

65. An offer to sell, made after the statutory period of residence and the submission of final proof, but pending the allowance thereof, is not inconsistent with good faith. 22-238

66. An agreement for conveyance that could not be enforced in a suit to compel specific performance, and that may be avoided by payment of a money consideration, does not operate as a disqualification nor will a contract that is simply a pledge for the payment of money; and especially will such contracts be so regarded where they appear to have become of no effect prior to the date of the entry. 22-544

67. Where one is induced to contract for disposal of part of a homestead, ignorant of any violation of law, but on learning the illegality of the contract voluntarily rescinds it, the entry will not be canceled on a contest charging such fraudulent contract, instituted by the party who induced it. 37-677

68. Where a homestead entryman, after full compliance with law in the matters of residence, cultivation, and improvement, but prior to acquiring equitable title, innocently and in good faith, with no intent to violate or evade any law, conveys the land, upon the supposition and belief that he has done all that the law requires of him and that he has a right to make such conveyance, such action will not be held to require cancellation of the entry, which,

upon rescission of the contract of conveyance, may be carried to completion. 40-79

69. The department has no jurisdiction to vacate a contract for the sale of a possessory right to a tract of land entered into by adverse claimants thereof, or enforce specific performance thereof, but it may consider and interpret the contract for the purpose of determining the qualifications and good faith of the parties thereto, as applicants under the homestead law. 25-399

V. Mining Claim.

70. A purchaser after entry but prior to patent takes the land subject to all infirmities of title, so far as the Government is concerned. 22-704

71. A transferee whose interest is acquired during the pendency of departmental proceedings involving the status of the claim takes no right better than that possessed by his grantor. 26-122

VI. Osage Land.

72. If settlement is made in good faith under the act of May 28, 1880, a subsequent agreement to convey will not in itself invalidate the entry. 8-173

73. Of Osage diminished reserve land not unlawful after compliance with law and issuance of final certificate. 9-98

74. The fourth section of the act of May 28, 1880, recognizes the right of an Osage entryman to sell the land after submission of final proof and payment of the first installment of the purchase price. 20-411

VII. Preemption.

75. Prior to final proof defeats the right of preemption. 6-746

76. The doctrine of "*bona fide* purchaser" does not apply to purchase of a preemptor before patent; if the entry is fraudulent or void, the purchaser takes nothing. 2-599; 3-393

77. The execution of a warranty deed by preemptor prior to entry is a legal bar thereto, but does not vitiate the preemption right; hence the entry may be admitted on reconveyance by the grantee. 1-407, 453

78. Where the land is not subject to preemption the entryman acquires no interest by his entry and can convey none; his grantee prior to patent is not a *bona fide* purchaser. 2-782, 795

79. The rescission of an agreement to convey will not validate acts of settlement that were invalid when performed, because made for the benefit of another. 3-488; 6-285

80. Preemption right not defeated by a contract to convey which is rescinded prior to final entry. 2-638

81. The intent to sell after final proof may be compatible with good faith, and not defeat the right of entry. 12-20

82. Of inconsiderable quantity of land without fraudulent intent not regarded under section 2262, R. S. 1-453

83. Whether an assignment by the pre-emptor after entry was made to a *bona fide* purchaser is immaterial as affecting the right of the entryman to assign. 3-23

84. Agreement to convey any part of a preemption claim, made prior to final proof, will defeat the preemptive right. 16-113

85. A contract to convey on receipt of final certificate renders the entry fraudulent and requires its cancellation. 8-269; 15-201

86. Preemptor may mortgage his claim to secure money for the purpose of making final proof and payment. 1-409; 6-340; 9-337

87. Preemption claim not invalidated by intention to mortgage the land, on receipt of final certificate, to secure the purchase money. 5-701

88. A mortgage given in good faith on the purchase of the improvements and possessory right of another, and to secure the repayment of money advanced to pay the Government price of the land, does not defeat the preemptive right. 13-198

89. The purchaser of a void title can not set up the rule of equitable estoppel; that loss should fall on that one of two innocent persons whose conduct rendered the injury possible. 2-797

90. That one made a speculative settlement under section 2262, R. S., may be proved by a contract before entry to convey after entry; but an agreement or con-

tract causing title to "inure" could only be made by a formal conveyance. 2-781

91. The clause in section 2262, R. S., concerning *bona fide* purchasers refers to sales before, and not after, entry; it has respect to the effect of the conveyance as between grantor and grantee, and not as between either party and the Government; it is to be enforced in the courts, and not in the land department. 2-779, 781, 783

VIII. Timber Culture.

92. Making a bond for a deed after a patent, with delivery of possession, retaining only the right of entry for breach of condition, is holding the claim for another's use and benefit, and works a forfeiture, notwithstanding resumption of possession. 2-329

93. A contract of sale in which the entryman is bound to execute a warranty deed to another, on securing title, defeats the right of the entryman. 2-329; 18-196

94. Entry will be canceled where the entryman has disposed of all his interest and is holding the entry for the benefit of the purchaser. 22-21

95. The revocation of a contract of sale after the initiation of a contest against the entry charging alienation will not relieve the entryman from the consequences of his illegal act. 18-196

96. A contract of sale to be consummated by deed after final proof and patent is in violation of law; and where after such alienation the entryman dies, his heirs are entitled to no greater rights than he had at the time of his death. 26-378

IX. Timber Land.

97. Prior to patent will not abridge authority of the Department over an entry under the timber and stone act. 9-573; 17-468

98. Purchaser after final certificate takes an equity only, and is charged with notice of all defects in the title. 10-415; 17-468

99. The phrase "*bona fide* purchaser" in the timber and stone act is not applicable to a purchaser before patent. 14-618

100. Transferee under a timber entry is not an innocent purchaser where the entry is fraudulent and he is a party to the fraud. 12-313

101. A purchaser prior to patent, takes but an equity, and can not plead the status of an innocent purchaser; nor can it avail him that the matters wherein the entryman testified falsely were solely within the knowledge of the entryman. 14-392

102. A contract or agreement that does not affect, in whole or in part, the title to the land is not within the inhibitory provisions of section 2 of the timber and stone act. 22-234

103. A power of attorney, executed and delivered by a timber applicant prior to final proof and entry, authorizing sale of the land is in violation of the act of June 3, 1878. 29-149

ALLOTMENT.

See INDIAN LANDS, II.

ALUM.

See MINERAL LAND, 29-30; MINING CLAIM, 840.

ALUMINA.

See MINERAL LAND, 43.

AMENDMENT.

See APPLICATION, II; CONTEST, 131-139, 188-189, 246; DESERT LAND, II, c; ENTRY, V; FILING, II; PRACTICE, III.

ANNUAL EXPENDITURE.

See DESERT LAND, II, d; MINING CLAIM, X, b.

APPEAL.

See PRACTICE, IV.

1. Does not lie from application of the local office on claims presented on the Vigil and St. Vrain grant. 11-226

APPEARANCE.

See ATTORNEY, 16-37; PRACTICE, IX, e.

1. A defendant may so far appear as to object to the jurisdiction, and such appearance is "special;" but if he seeks to call into action any powers of the court

except such as pertain to its jurisdiction the appearance is general. 12-620

2. The effect of a general appearance can not be modified by a subsequent allegation that it was special in character. 12-14

3. Is general in the absence of expressed limitation. 6-269

4. Is "general" where defendant's attorney appears and cross-examines the witnesses; and effect of such appearance can not be avoided by calling it "special." 10-405

5. For the purpose of securing a new trial on the ground that proper notice was not given of the former proceedings, confers jurisdiction upon the local offices for the purposes of the motion. 15-404

6. Appearance of attorney is general if he seeks to call into action any powers of the court except such as pertain to its jurisdiction. 12-620

7. A party may not plead a special, where the record discloses a previous general, appearance without limitation as to the purpose thereof. 17-393

8. At a hearing without objection to the notice waives any defect therein. 17-393

9. For the purpose of securing an order to take testimony by deposition and a continuance until said testimony is taken and returned is general, and confers jurisdiction on the local office. 17-159

APPLICATION.

See CONTEST; MINING CLAIM, V; RAILROAD LANDS.

I. Generally.

II. Amendment.

III. Desert land.

IV. Homestead.

V. Preemption.

VI. Private entry.

VII. Timber culture.

VIII. Timber and stone.

IX. With contest.

X. With relinquishment.

I. Generally.

1. Circular of November 3, 1909, relating to applications, selections, etc., covering unsurveyed lands. 38-287

2. A rule of the local office regulating the presentation of, adopted to avoid confusion, is conclusive upon parties taking action thereunder without protest. 18-14

3. Regulations of the local office governing the manner of making, on opening public lands to entry, conclusive upon parties taking action thereunder without protest. 14-370

4. In the absence of, the right to make an entry will not be considered. 4-310; 7-254; 9-194

5. To enter, must show residence and post-office address. Circular of October 25, 1886. 5-198

6. Indefinite in its description of the land can not be allowed. 21-445

7. Failure to sign is not a fatal defect, where the accompanying affidavits are properly executed; the local office in such case should suspend action and allow a reasonable time to cure the defect. 21-164

8. A nonmineral affidavit, sworn to before a notary, and forwarded to the local office with the fees and commissions required on making homestead entry, can not be regarded as an application to enter, and operating to segregate the land. 25-475

9. When filed, name of applicant to be noted thereon. 5-198

10. When presented, due record of action thereon should be made. 1-81; 4-350, 535; 11-191

11. Circular of March 26, 1902, under act of March 11, 1902, relative to officers before whom affidavits, proofs, and oaths may be made. 31-274

12. Instructions of April 12, 1902, relative to execution of affidavits, proofs, and oaths before deputy clerks. 31-286

13. It may be fairly presumed that the proper tender of money was made therewith, where the record is silent as to such tender, and the application is rejected for a reason not involving any question with respect to the tender of money. 21-187

14. Not defeated by failure to fill a blank left in the prescribed form of preliminary affidavit where the intended use of said blank is not apparent. 6-365

15. To make entry that does not show applicant's qualifications properly rejected, and defect in such respect can not be cured

by subsequently calling attention to another record. 14-531

16. To enter filed since the act of August 30, 1890, must be accompanied by affidavit showing that since said act the applicant has not filed upon nor entered a quantity of land that would make, with the tract applied for, more than 320 acres. 16-271

17. The affidavit required of homestead applicants amended to state that since August 30, 1890, the applicant has not acquired title to, and is not now claiming under any of the agricultural public-land laws, an amount of land which, with the land applied for, will exceed 320 acres. 32-400

18. To enter must show the present status of the land and qualifications of the applicant. 10-364; 13-365

19. When filed subject to prior adverse applications, the qualifications of applicant should not be determined before adjudication of the relative rights of the parties in interest. 26-553

20. Should not be allowed where application and preliminary affidavit were executed while the land was not legally liable to disposal. 1-164;

2-269; 3-320; 14-127; 17-345
529; 18-482; 19-178; 22-276

21. Validity not affected by the fact that the preliminary affidavit is executed before the land is formally declared open to entry, where, prior thereto, the land was restored to the public domain by an act of Congress. 19-570; 22-110, 486

22. That an entry is allowed on papers executed prior to the time the land is open to disposal, is a matter between the entryman and the Government, where the entryman, as the prior settler, is entitled to make entry of the tract. 27-305

23. Preliminary affidavit is invalid if sworn to before the township plat is filed. 1-157

24. Preliminary affidavit may be received though executed while the land was covered by a prior entry. 1-121

25. Filed before cancellation of an entry (after relinquishment), with fees and commissions, gave applicant no rights. 2-49

26. Allowed on preliminary papers executed while the land is covered by the

entry of another is not void but voidable; and defect may be cured in the absence of adverse claim. 20-13, 57

27. Acceptance of, with agreement to place of record when a previous entry is canceled confers no right. 2-49

28. The presentation of papers to the local office, with instructions to file them under certain contingencies, is not a legal. 6-365

29. No rights acquired by presentation prior to official filing of plat. 37-118

30. Transmitted by mail regarded as filed at the moment it reaches the local office (9 a. m.), though not opened until afterwards. 2-326

31. Presentation to, and acceptance by, the local officer (receiver) at a place other than the local office is unlawful, and no bar to an application properly, but subsequently, filed on the same day. 2-320

32. Not invalidated because received out of office hours. 5-694; 6-1

33. Handed to one of the local officers out of the office, not in office hours, and without the required fee, is not legal. 3-108

34. It is no objection to, that it is tendered prior to business hours in the local office where retained by the local officers and acted upon during the business hours of that day; nor does the fact that it bears the date of the day previous impair its validity, when it was presented on said date and refused because filed out of business hours. 19-547

35. For public land may be withdrawn at any time. 5-222; 9-29

36. To enter, presented while business in the local office is suspended by order of the commissioner, confers no right. 14-316

37. Order of June 13, 1896, with respect to, filed during vacancy in local office. 22-704

38. To enter, received during vacancy in office of register, treated as simultaneous, on the resumption of business in the local office. 22-612

39. Made during vacancy in local office confers no vested right. 1-150; 4-170

40. Filed during vacancy in register's office is, in contemplation of law, submitted for official action when the vacancy is filled. 12-297

41. Tendered during vacancy in office of register, and when, under the rulings then in force, it should have been received and held to await the resumption of business, entitles applicant to have it treated as filed, though in fact returned on account of such vacancy. 26-363

42. In case of simultaneous, the right of entry may be disposed of to the highest bidder. 21-444

43. Where two or more applications are held simultaneous, any question as to whether they were in fact simultaneous is waived by appearance and participation in the bidding for the right to enter, without protest. 37-241

44. All presented at opening of new land office treated as simultaneous. 1-157

45. Of two persons held simultaneous where both were present at the same time and the papers of one were filed while the other was engaged in examining the tract book. 14-145

46. In case of simultaneous, where one of the applicants has settled upon and improved the land, and the other has not, priority of right should be accorded the actual settler. 22-612

47. The right to make entry in cases of simultaneous, should be sold to the highest bidder in the absence of settlement and improvement. 3-312, 535, 555; 4-190; 16-302

48. Rules for reception of, on filing new plats, only applied in like cases. 4-318

49. Upon the filing of a township plat the local officers may treat as simultaneous all applications filed by persons present at the hour of opening, and in case of conflict award the right of entry to the highest bidder. 36-356

50. Where the right of entry as between simultaneous applicants is awarded to the highest bidder, and the applicant making the highest bid fails to pay the amount bid by him, within the time fixed, the next highest bidder should thereupon be awarded the right of entry. 37-241

51. Not simultaneous where a few seconds intervene. 3-419; 4-190

52. Reliance upon bid to determine preference in case of simultaneous, precludes setting up after-acquired improvements. 4-190

53. In determining priority, statements of the local officers, contained in their report made in the ordinary course of business, are entitled to due weight and consideration. 19-547

54. To enter tendered in person, or sent through the mail, should be acted upon in the actual order of arrival and presentation; and the refusal of said office to observe such order will not defeat the right of an applicant to have his application subsequently treated as though acted upon in its proper order. 27-113

55. To enter presented in person at the hour of opening is entitled to precedence over a conflicting application received at the same hour by mail; and if part only of the land covered thereby is subject to entry it should be allowed as to that part and rejected as to the remainder. 35-409

56. To enter presented in accordance with an order of the local office at a time when on account of press of business it could not be acted upon, and on which the fees were tendered in a reasonable time, confers upon the applicant a right superior to that acquired under a subsequent entry by another. 28-48

57. An applicant who, under a rule adopted by the local office, deposits his, and receives a number corresponding to his place in the line of applicants, and thereafter fails to respond to such number when it is reached and called, loses his priority as against a subsequent intervening applicant. 22-295

58. Where a settler applies to enter land in two districts, and files simultaneously in each district an application for the specific subdivision lying within said district, and one of said applications is allowed, and the other rejected on account of suspension of the township, the rejected application may be revived and allowed as of its original date, on the removal of the suspension. 20-412

59. Rights under relate back to date when actually made, irrespective of a later date shown by the papers through no fault of the applicant. 12-173

60. Rights under a pending should be protected as against intervening adverse claims, where the delay in perfecting entry is not due to negligence on the part of the applicant. 27-619

61. To enter while pending reserves the land from other disposition until final action thereon. 2-43;

3-156, 218, 344; 4-350, 455; 5-424; 7-136; 9-29, 92, 545; 10-192, 510; 12-47, 324; 13-56; 16-352; 26-219

62. To make mineral entry, duly presented but held without action during the absence of the register, reserves the land covered thereby until final action thereon. 11-213

63. To purchase under the act of June 15, 1880, reserves the land until final action thereon. 11-416

64. To enter is equivalent to actual entry so far as the rights of the applicant are concerned. 12-324, 643

65. To enter land subject thereto is equivalent to actual entry so far as the rights of the applicant are concerned, and, in event of his death, his heirs are entitled to complete the entry. 20-535

66. No such right is acquired against the Government by the mere tender of an application to enter as entitles the applicant to even equitable consideration where interests of the Government intervene. 35-649

67. To enter, properly rejected, does not reserve the land, even though an appeal is taken from the order of rejection. 20-93

68. An appeal from the action of the local officers rejecting an application entitles the applicant only to a judgment as to the correctness of such action at the time taken. 33-426

69. An appeal from the rejection of, does not operate to reserve the land and entitles the applicant only to a judgment as to the correctness of such action at the time taken; and where properly rejected, it is immaterial, in the face of an adverse appropriation of the land, whether the applicant received notice of such action. 34-541

70. An appeal from the rejection of, entitles applicant to judgment only as to the correctness of such action at the time taken and upon the showing made when the application was presented to and passed upon by the local officers, and if properly rejected when presented, it should not thereafter be allowed, upon a supplemental showing filed with the appeal, to the prejudice of an intervening applica-

tion filed prior to such appeal and supplemental showing. 38-457

71. To make entry of land within the uncanceled entry of another gives the applicant no right, even though the statutory life of the record entry had expired at date of the application. 19-467

72. To enter, properly rejected because the land is covered by the entry of another, and appeal from such action, confer no right upon the applicant as such. 19-442; 20-135

73. To enter, while pending, is only equivalent to an entry where the land is subject thereto and the application is improperly refused. 13-71,

498, 502; 18-14, 45; 20-288, 389

74. To enter, under which no rights can be acquired, properly rejected and pending on appeal, will not defeat a subsequent indemnity selection. 18-163

75. To reinstate canceled entry reserves the land. 2-43; 4-446; 15-569

76. For reinstatement of an entry for land embraced within the intervening entry of another is at once effective on cancellation of the intervening entry, and segregates the land covered thereby. 11-375

77. To make second entry reserves the land while pending. 20-123

78. No difference in principle between a filing (homestead application) made of record and one offered and erroneously rejected. 2-37, 548

79. To enter, pending at the passage of the act of March 3, 1887, does not except the land from the operation of said act. 14-498

80. Informally made to surrender a patent and take other land, to correct an error of the land department and avoid litigation, reserves the land from other disposition. 14-50

81. To locate a warrant upon a specific tract, duly filed with the commissioner, reserves the tract, even though the warrant and fees are lost in the General Land Office, and, in consequence, no record of the location is made in the local office. 14-278

82. To select school indemnity reserves the land until final action, and, if accepted, takes effect as of the date presented. 14-72

83. To select railroad indemnity, pending on appeal, precludes the acquisition of adverse rights by settlement or filing. 14-418

84. To enter can not be allowed during the pendency of an appeal from a decision holding for cancellation the existing entry of another for the land. 11-469; 12-334; 14-423

85. To enter or file when the land is not subject thereto confers no right. 12-188, 261; 16-199; 34-380

86. To enter land in the existing entry of another confers no rights and should not be allowed. 13-381; 15-27, 309; 20-389, 535

87. To enter lands covered by existing entry confers no right; and if rejected and appeal taken it is not a pending application that will attach on the cancellation of the previous entry. 13-502; 16-44

88. An appeal from rejection of application because the land is not subject to entry, confers no right, even though the land becomes subject to entry during the pendency of the appeal. 30-220

89. To enter can not be allowed for land in a *prima facie* valid timber-culture entry (made by a married woman). 16-130

90. To enter land covered by the prior entry of another can not be entertained in the absence of a charge against the validity of such entry. 11-179, 327

91. To enter conflicting in part with the prior entry of another may be allowed as to the part not in conflict and rejected as to the remainder. 21-145, 444

92. If part of the land is subject to entry, and part is not, the application should not be rejected as an entirety, but may be allowed for the land subject to appropriation. 25-108

93. To enter, embracing in part land not open to entry, while pending, protects the right of the applicant to the portion subject to appropriation at the date of his application. 26-159, 163

94. To enter, rejected on account of partial conflict with a prior entry, does not reserve the land not in conflict, where instead of appealing from the rejection the applicant contests the prior entry; nor does the pendency of the contest re-

serve the tract not in conflict for the benefit of the applicant. 21-208; 27-144

95. Where an application can not be allowed because it covers in part lands in an existing entry, and the applicant subsequently files a new application embracing a part only of the vacant lands covered by the first application, he thereby waives all right to the remainder. 35-280

The elimination of one of the tracts embraced in an application does not constitute an amendment or render it subject to a conflicting State selection filed subsequent to the application but prior to the elimination. 38-380

96. Can not be allowed for land within a private cash entry, even though such entry may have been irregularly allowed. 15-257

97. An applicant to make homestead entry of a tract covered by a donation claim is not entitled, on appeal from the rejection of his, to raise a question as to the citizenship of the donation claimant. 26-565

98. To select, filed by a State when the lands are not subject thereto, confers no right. 17-417; 22-385

99. Where the applicant alleges prior settlement as against the entry of another, a hearing should be ordered to determine the rights of the parties. 5-526; 6-330; 8-528; 15-379; 16-310; 18-23

100. To enter, must be rejected where the land is covered by a prior entry and embraced in a pending contest. 2-55; 9-578; 12-11, 377

101. To enter, not allowed for land included within the prior pending application of another. 12-47; 16-292; 21-145; 27-150

102. To enter, presented while the land is involved in the pending application of another, should be held to await the final disposition of the prior application. 17-148, 592

103. To enter, held to await action on the prior application, protects the applicant as against subsequent claims, but in no manner can affect the disposition of the prior pending claim. 21-434

104. It is not necessary for protection of a settlement claim, on land included in a prior pending, that the settler assert

his right by application to enter while the land occupies such status. 28-496

105. To enter, not allowed for land within a preemption claim under which notice of intention to submit final proof has been published. 8-406, 414; 9-175, 215; 16-520; 17-381

106. To enter, may be allowed during the period accorded for the exercise of the preference right of a successful contestant, subject to such right. 1-162; 2-321; 4-534; 6-643; 9-70; 10-221

107. The acceptance of an application to enter, subject to the right of a successful contestant, does not vest any right as against the contestant, but protects against intervening applications. 18-504; 19-160

108. To enter, tendered during period accorded contestant for exercise of his right, and held in abeyance, will take effect on the land covered thereby, not taken by the contestant, to the exclusion of a subsequent application of another. 21-187

109. To enter, improperly held to await prior proceedings, when allowed, relates back to the time it was received with the proper fees, and cuts off intervening adverse claims. 22-571

110. To enter, filed subject to contestant's preferred right, take precedence in the order of filing, if contestant fails to exercise his privilege. 22-203

111. To enter, after judgment of cancellation on contest, should be received and held to await action on part of contestant; and if he waive his preferred right the application so held in abeyance is entitled to precedence as against subsequent claims. 24-408

112. Rights under an application held subject to the preference right of a successful contestant, if not diligently asserted after expiration of the preference-right period, will be treated as abandoned in the face of an intervening adverse claim. 39-488

113. To enter, accompanied by relinquishment of entry under contest, made by a stranger to the record, should be held to await expiration of the time allowed a successful contestant for the exercise of his preferred right, or may be allowed if it appears that contestant is disqualified or has waived his right. 24-81

114. Circular of March 25, 1897, with respect to, pending contest, and during the period accorded a successful contestant.

25-61

115. To enter, made after final judgment canceling a prior entry, is entitled to the same consideration, and has the same force and effect as against all persons other than the successful contestant, as if no preference right had been awarded.

27-185

116. Circular of July 14, 1899, directing that no, will be received for a tract embraced in an entry of record until the entry has been canceled in the local office, and making provision for applications tendered during the period accorded a successful contestant.

29-29

117. To enter, not received during pendency of contestant's preferred right. (*Allen v. Price.*)

15-424

118. To enter, may be received during time allowed for appeal from judgment of cancellation, subject to appeal, but should not be made of record until the rights of the former entryman are finally determined. (See 24-81; 28-515.)

6-563;

10-221; 12-243; 13-600; 20-147

119. To enter, should not be received during time allowed for appeal from judgment of cancellation, nor the land held subject to entry, or application to enter, until the rights of the entryman have been finally determined. (See 28-515.)

24-81, 209

120. The rule laid down in *Cowles v. Huff* (24 L. D., 81), with respect to, made after judgment of cancellation and prior to appeal therefrom, but within the time allowed therefor, is applicable to pending cases.

25-340

121. Under the first rule announced in *Cowles v. Huff*, no rights are acquired to lands involved in a pending contest by an application to enter filed before the rights of the entryman have been finally determined.

28-515

122. To enter, will not be received, nor any rights recognized as initiated by the tender thereof, for a tract embraced in an entry of record, until said entry has been canceled on the records of the local office.

28-515; 32-395

123. Where proceedings are instituted by the Government solely to clear the

record of an existing entry, no question of a preference right is involved, and where a relinquishment is filed and there are no adverse rights, the rule that no application to enter shall be received until notation of cancellation of the entry upon the records of the local office, has no application.

34-437

124. On the judicial vacation of a patent the land should not be held open to, until the entry is canceled of record in the local office.

29-178

125. On denial of a motion for review of a decision that refuses reinstatement of an entry, the land is thereupon subject to entry; and an application tendered therefor, prior to receipt of notice at the local office of the decision on review, must be regarded as legally made.

20-391

126. Can not be allowed during the pendency of a departmental order directing that no entries be permitted pending final determination of an alleged right under the townsite laws.

21-71

127. Lands within a departmental order directing their reservation until further instructions are not subject to entry during the pendency of said order.

24-284

128. To enter, filed during an Executive withdrawal for a public purpose, confers no right; but it is within departmental discretion, on removal of the reservation, to recognize applications so filed, subject to prior adverse claims.

24-462

129. To enter, filed for lands restored to entry under a decision of the Supreme Court, prior to the time fixed therefor by the department, should not be allowed.

23-407

130. To enter, rejected on account of a reservation for the benefit of certain Indians, may be allowed in the event the lands so applied for are restored to settlement and entry after due investigation.

18-38

131. To enter land reserved for the benefit of an Indian confers no right that can be recognized on removal of the reservation, in the presence of a valid intervening adverse claim.

25-95

132. To enter lands withdrawn for railroad purposes confers no rights; and new application will be necessary on subsequent restoration of the land.

14-613;

15-91

133. To enter lands within railroad grant, pending on appeal, may be allowed on the forfeiture of the grant. 6-679

134. Properly rejected because prematurely made, may be allowed on removal of the bar. 6-679

135. To enter can not be allowed for land embraced within an existing railroad indemnity withdrawal. 12-27;
21-462; 25-394

136. Rejected on account of railroad indemnity withdrawal, may be allowed, when the withdrawal is revoked, as of the date the land was opened to entry. 6-309, 378; 7-240

137. Rejection of, for lands withdrawn for railroad purposes does not preclude the settler from making entry thereof on the subsequent restoration. 14-525

138. To enter a tract "listed as railroad land," and rejected for that reason, and pending on appeal, will attach at once, as of the date of the application, on cancellation of the list as to that tract. 21-109

139. To enter can not be accepted for land embraced within a prior railroad indemnity selection. 12-386

140. To enter, in conflict with a railroad indemnity selection, may be considered in connection with final action on the selection. 23-513

141. To enter lands formerly within the withdrawal for the Marquette, Houghton & Ontonagon road may be accepted for lands covered by unapproved selections, subject to the claim of the company. 13-56

142. To enter lands embraced in the order restoring to entry lands certified for the benefit of Bay de Noquet grant confers no right if filed before the day fixed for such restoration. 16-332

143. To make entry of land within a pending rejected indemnity selection may be allowed on a record showing of a *prima facie* prior settlement right (and where the company declines to furnish the requisite basis for a hearing), and the conflict remain for determination on offer of final proof or under the selection. 14-79

144. No rights are acquired under an application to enter land covered by a

railroad indemnity selection made in compliance with law. 27-382;
28-298, 371, 431; 29-125, 442

145. In determining priorities of claims arising upon the filing of a list of selections on the day the plat of survey was filed, and the presentation, on the same day, of homestead applications, the actual time of presentation of the claims will be recognized. 31-151

146. Where an order canceling a list of railroad indemnity selections provides that no disposal of the lands shall be made until pending applications have been adjudicated, and a hearing is subsequently directed as between said applicants, at which they appear, they will not be held in default as to the timely assertion of their settlement claims on account of failure to make application to enter within three months after said cancellation. 29-125

147. An applicant who attacks the validity of a prior indemnity selection is entitled to the allowance of his application if the company, after due notice, fails to respond. 29-218

148. To enter land covered by the claim of another is not recognized as the initiation of a contest against said claim. 15-415; 20-135

149. To make homestead entry can not be allowed for land covered by a school selection. 10-263

150. To enter land covered by an illegal school selection should not be allowed, but taken as an attack upon the selection. 15-549

151. To enter, barred by invalid school selection; but as in the nature of an attack upon the selection, it may be allowed on cancellation thereof. 6-439

152. To make timber-land entry of lands within an existing State selection confers no right upon the applicant. 25-432

153. Pending disposition of a school selection, even though erroneously received, no application including any portion of the land should be accepted, nor will any rights be considered as initiated by the tender of any such application. 34-12

154. To enter, presented after a school indemnity application, but prior to its allowance, may be noted of record and

take effect as of the date presented if the claim of the State fails. 14-72

155. Applications under the timber and stone act presented within 60 days from the filing of the plat may be accepted and held subject to exercise by the State of its preference right of selection, but no further action should be taken during that period with a view to allowance of such applications. 36-89

156. To enter land involved in a contest must remain in abeyance until final disposition of the contest. 9-578

157. For land covered by *prima facie* void entry should be held till the status of the entry is settled. 3-181; 4-448

158. To enter should not be allowed during the pendency of a charge affecting the good faith of the entryman. 10-402

159. To enter land certified to a State under a railroad grant will not be entertained. 10-575

160. To enter lands covered by unapproved railroad selection, procedure in case of. 10-504

161. To enter, rejected by final decision of the department, is *res judicata*, and can not be reinstated with a view to allowance under a changed construction of the law. 19-459

162. To enter, properly rejected by final decision of the department, under rulings then in force, can not be reinstated with a view to favorable action under a changed construction of the law. 23-452

163. In event of change in construction of law after rejection of application, the application will not be reinstated, but applicant may make new application, if qualified, and no intervening right has attached. 26-444

164. The tender and rejection of, can not operate to deprive claimant of his right to again present his application for proper action thereon. 19-547

165. If rejected, rights thereunder can only be saved by appeal. 3-473
13-250, 365

166. Instructions with respect to the proper procedure in case of rejected, or amendment thereof after rejection. 3-119

167. Applications to enter may be received and suspended subject to disposi-

tion of prior rejected applications; but entries thereunder should not be allowed until the prior applications have been finally disposed of. 38-458

168. To enter, properly rejected, and pending on appeal, does not oust the local office of its jurisdiction over a subsisting entry of the land involved. 19-442

169. Failure to appeal on rejection of, does not defeat the right of the applicant if the requisite notice in writing of such adverse action is not given the applicant. 5-377; 11-191; 10-111;
18-6; 22-576; 27-632

170. If rejected, applicant should be informed of his right of appeal; and in the absence of such information, failure to appeal will not defeat the subsequent right of applicant to be heard. 5-377;
12-235, 684; 27-632

171. Failure of applicant to appeal from adverse action of the local office will not prejudice his rights where such action is not indorsed on the, and applicant notified of his right of appeal. 22-630

172. The time within which appeal may be taken from the rejection of, is limited by the notice of such action, and not by the action itself. 13-598

173. Failure to appeal from rejection of, will not bar a subsequent assertion of priority where such failure is due to erroneous information from the local officers as to the record status of the land. 12-550

174. Failure to appeal from rejection of, will not preclude subsequent assertion of priority where at date of such action the title was erroneously believed to be not in the United States. (See 17-494.) 16-368

175. Failure to appeal from rejection of an application to file a declaratory statement defeats all rights that might have been secured thereunder, and such failure is not excused by the fact that title to the land was erroneously believed to not be in the United States. 17-494

176. An applicant who fails to appeal from rejection of, loses all rights; nor can the heir of applicant be heard to subsequently assert any claim thereunder. 20-459

177. Failure to formally appeal from rejection of, will not defeat the right of an

applicant who by his subsequent diligence secures an examination of the record.

20-550

178. Failure to appeal from erroneous rejection of, defeats the right of applicant where the adverse application of another intervenes. *Ard v. Brandon*, 156 U. S., 537, distinguished.

27-689

179. On appeal from rejection of, applicant need not serve notice upon other applicants for the same tract where the question is solely between each applicant and the Government.

13-392

180. On appeal from rejection of, applicant is not required to serve notice on a subsequent applicant for the same tract.

16-285

181. Appeal from rejection of, will not be entertained in absence of notice to adverse claimant of record.

11-621;

17-325; 19-482

182. The local office has no authority to stipulate that a rejected, shall be held in abeyance, without appeal, to await departmental action in a similar case.

13-250

183. Appeal from rejection of, does not operate to save or create rights not secured by the application itself.

13-502

184. Appeal from rejection of, on the ground that the entry then covering the land is invalid, confers no right upon the applicant where said entry is under investigation by the department.

13-386

185. Failure to make written, held without prejudice on account of erroneous advice of the local officers.

1-151

186. Right of applicant not prejudiced by mistake of local office.

11-191

187. To enter not defeated through failure of local office to note of record an order canceling a former entry of the land.

12-643

188. The local officers in assisting in the preparation of his application are agents of the applicant, and where error in description is made by them he can not set up such error to defeat the intervening rights of another acquired in ignorance thereof.

35-345

189. Corroborated affidavits showing the filing of, may be accepted as conclusive, where the records do not disclose the fact of filing, nor tend to contradict the showing made by applicant.

17-53, 279

190. Made in due compliance with regulations is not prejudiced by a subsequent change of regulations, made prior to action on the application, especially where applicant complies with the later construction of the law when notified thereof.

12-297

191. In case of a valid, held for a long period without action, the local office should give applicant at least 30 days' notice in calling upon him to appear and exercise his right of entry.

27-619

192. No right is secured by, to make entry, that will bar the allowance of a hearing, as to the status of the land involved, on the prior application of another party.

25-337

193. One can not by two concurrent applications hold segregated double the quantity of land he is entitled to enter.

39-451

194. To enter, made pending appeal from the rejection of a former application, is in effect a waiver of the first.

9-29

195. To enter is not affected in its legal operation by second application of the same party.

13-56

196. A second, made under an erroneous direction of the General Land Office, will not be considered, on the intervention of an adverse claimant, as a waiver of rights secured under the first, that in fact was legal in all respects, and entitled to recognition at the date of action thereon by the General Land Office.

27-135

197. To enter, not required for protection of a settler as against an adverse entryman, where the settler, within three months after settlement, applies to contest such entry, alleging his own priority.

16-266, 270; 17-345

II. Amendment.

See VIII HEREOF; ENTRY, V; FILING, II.

198. To amend an entry reserves the land covered thereby.

2-44; 3-156; 4-365;

5-149; 6-264; 12-558; 15-579; 24-429

199. To amend a filing protects preemptor as against intervening claims, and if granted relates back to date when made.

9-139

200. To amend a filing takes precedence over a subsequent filing by another for the same land.

7-324

201. During the pendency of, to amend an entry, no other person should be allowed to make entry of the tract, but where it is denied, an entry allowed during the pendency of the application may remain intact. 28-387

202. To amend a filing will protect the applicant as against the subsequent settlement of another. 9-98

203. The right to amend not to be abridged by technical rules. 3-429

204. Of homestead, irregular because executed while land was appropriated, allowed (there being no adverse claim). 2-270

205. The right to file an amended affidavit, showing qualification to make entry, not defeated by pendency of a contest, where contestant is not qualified to take the land in event he secures a judgment of cancellation. 19-282

206. An amendatory, or supplemental application to enter, filed under a practice of the local office that called for such action, will not be regarded as an abandonment of rights secured under the original application. 18-486

207. To enter, defective when tendered, in matters that may be supplied by amendment, and returned by the local office without rejection or official notification of the reasons for such return, is a pending application that will protect the applicant against intervening claims. 28-333

208. A pending petition to amend is no bar to other applications to enter, subject to the petition to amend; and upon rejection of such petition the subsequent applications to enter should be considered and disposed of in the order of filing. 35-134

209. To enter, suspended on account of defects, with notice to the applicant, operates to reserve the land until final action thereon. 26-389

210. Where irregular in form, and returned for correction, should be regarded by local office as pending for a reasonable time, and excluding, during said period, other applications for the land. 21-60; 28-73

211. Timber culture, erroneous in form (naming wrong act) and returned for correction, takes effect as of date first received. 2-44

212. Timber culture, may not be altered or amended by an attorney so as to include a different tract. 2-261

213. Should be rejected if defective when presented; and the right of the applicant to thereafter perfect, can not be recognized in the presence of an intervening adverse claim. (See 26-54, 389.) 1-164; 19-37

214. A change in description of the land, pending final action, is subject to intervening settlement rights. 9-302

215. To amend an entry does not excuse claimant from compliance with law while pending. 5-349

216. To amend an entry, suspended on account of a prior existing entry, confers no right, as against a settler, in event of cancellation of the prior entry. 25-448

217. When an application is rejected for defect the applicant may amend or appeal, but can not do both, and in neither case can the land be reserved awaiting choice of action. 3-120

218. Coal land, improperly made by an agent, may, in absence of adverse filing or complaint, be made *nunc pro tunc*. 2-735

219. The affidavit or sworn statement of an applicant under the timber and stone act must be sworn to in the county, parish, or land district where the land is situated; and where the land is incorrectly described, and application to amend is filed, the amendatory affidavit must be sworn to in the same manner as an original affidavit. 34-539

III. Desert Land.

220. Is the initiation of the claim. 6-541

221. To make desert entry, accompanied by the purchase money, segregates the land. 5-694

222. For desert claim, either under Lassen County act or the general law, exhausts the right of the claimant. 18-99, 580

223. If in accordance with regulations, should not be rejected because not in conformity with later requirements. 8-408

224. To make desert entry can not be allowed while the land is covered by a previous timber-culture entry of the applicant. 10-541

225. To make desert entry must show that applicant's knowledge as to the character of the land is derived from personal examination of the same. 7-312; 8-96; 13-21

226. Based on preliminary papers executed before a deputy clerk outside the county in which the land is situated, can not be accepted; but the applicant may file a new affidavit, subject to intervening claims. 18-364

227. Declaration, and affidavits therewith, made outside the county, are invalid and can not be accepted. 20-482

228. Can not, under act of May 26, 1890, be executed before a commissioner of a circuit court outside the county in which the land is situated. 16-271

229. Under act of March 4, 1904, an application made outside the land district is nevertheless, if made within the county in which the land is situated, properly executed 33-221

230. A desert-land declaration may be executed before the judge of a county court. 19-160

231. The preliminary affidavits of applicant and his witnesses must be made at the same time and before the same officer. 13-21

232. Prior personal inspection of the land confers no priority as against other applicants or settlers. 13-207

233. To enter land covered by the entry of another is not a claim protected by the act of August 30, 1890, and on the cancellation of such entry applicant will be restricted to 320 acres. 14-636

234. Irregular in the matter of initial payment, received and marked "filed," must be treated as allowed so far as to protect claimant against the limitation of acreage by the act of August 30, 1890. 14-551

IV. Homestead.

235. Circular of September 12, 1908, relative to segregative effect of soldiers' additional applications. 37-160

236. Applicant alien born required to furnish proof of declaration of intention to become a citizen. 2-194

237. To enter, made by an alien prior to declaration of intention to become a

citizen, confers no right, and a settler occupying such status is without protection as against an intervening adverse claim of record. 24-60

238. Where a foreign-born homestead applicant fails to file with his application proof of naturalization, or that he has declared his intention to become a citizen, it is within the discretion of the local officers to receive the application and afford the applicant opportunity to furnish the required proof, or to reject it outright, in which latter event it can have no effect to segregate the land from other appropriation. 34-541

239. To make homestead entry should bear a date approximate to the date of the preliminary affidavit. 13-205, 506

240. To make entry under section 2294, R. S., as amended, circular of June 25, 1890. 10-687

241. Under section 2294, R. S., is for protection of the settler's claim against strangers; if executed prior, but received at the local office subsequent, to a private entry, the settler has priority of right to the land. 2-123

242. Based on preliminary affidavit executed before a clerk of court, without the prerequisite residence, confers no right as against an intervening adverse claim. 2-93; 6-425; 7-245; 8-1; 9-209; 13-686; 15-337; 16-98

243. The preliminary affidavit required in all entries made since August 30, 1890, can not be received if made outside the land district; but in the absence of any adverse claim, the applicant may file a new affidavit. 18-232

244. A preliminary affidavit executed before a United States commissioner outside the county in which the land is situated is irregular, and a new affidavit should be required. 22-486

245. The preliminary affidavit (Form 4-102b) should be executed within the district in which the land is situated; but where not so made, an entry may be equitably confirmed for the benefit of a purchaser whose good faith is apparent. 22-114

246. Distance from the local office, expense, etc., warrant making preliminary homestead affidavit before a clerk of the

county court, under the act of May 26, 1890. 15-156

247. Distance from the local office, character of the country, and season of the year, may be properly considered in determining whether a preliminary affidavit may be made before a United States court commissioner in the county where the land lies. 25-420

248. Section 2294, R. S., as amended by act of May 26, 1890, warrants the allowance of, sent by mail, where the homesteader, by reason of poverty, and distance from the local office, is unable to present his application in person. 27-156

249. A homestead entry, based on a preliminary affidavit executed before a clerk of court on the false allegation of "distance" from the land office, and filed by mail to secure an advantage over applicants in person, will be canceled. 20-300

250. An affidavit made before a United States commissioner, or clerk of court, is not valid unless it shows that the applicant "is prevented," by distance, bodily infirmity, or other good cause, from personal attendance at the district land office. 21-294

251. To make entry prepared before a clerk of court, or other officer remote from the local office, takes effect only when filed in the proper land office. 21-294

252. The act of August 4, 1894, validates preliminary affidavits executed before United States court commissioners, instead of United States circuit court commissioners, if no other objection exists. 20-482

253. A nonmineral affidavit, alleging personal knowledge of the land, when in fact the affiant had no such knowledge, does not render the entry illegal, and in the absence of any charge that the land is mineral, the defect may be cured by a proper affidavit. 25-471

254. As between two applicants, where the question of priority depends upon the time of settlement on the part of one, as against the time of application by the other, the settler will be given precedence, if it can not be satisfactorily determined that the adverse application was regularly tendered prior to the act of settlement shown, and entitled to consideration at such time. 28-267

255. To make homestead entry not accompanied by the requisite fees does not reserve the land. 8-224

256. Returned because accompanying fees are insufficient, will be accepted if refiled before other rights intervene (contest or entry). 2-279

257. To make homestead entry not defeated for want of a tender of fees and commissions and preliminary affidavit where it was rejected on account of the preferred right of another. 7-186

258. Erroneous refusal to accept homestead claim, on ground that land was reserved as saline, does not prejudice the claim; entry must be allowed as of date of application. 2-848

259. To enter, protects the applicant from the intervention of any adverse claim until final action thereon. 9-29, 92; 13-154; 14-658

260. No such rights acquired by application to make second entry, while the first is still of record and not actually abandoned, as will prevent allowance of the subsequent application of another. 36-450

261. By the mere filing of an application, upon which action is suspended, and tender of the necessary fees, the applicant acquires no vested right to or interest in the land. 35-250

262. Of homesteader dying before entry reserves the land and entitles the heirs to complete the entry. 2-77; 6-134

263. In case of the death of an applicant whose application was received during the 30-day preferred period accorded a successful contestant and held subject to contestant's rights, his heirs, upon expiration of the preferred period without action by contestant, are entitled to complete the right initiated by the application and perfect entry thereunder in accordance with section 2291, R. S. 38-521

264. Not containing the names of all the minor heirs, on whose behalf made, may stand, patent to issue in the name of the minor heirs. 5-222

265. In due form, signed for the applicant by his attorney, may be accepted where it appears that such act is authorized by the applicant. 15-156

266. A woman who states in her preliminary affidavit that she is the head of

a family, a single person, and a native-born citizen, fulfills the personal qualifications, and should not be required to make an additional statement as to her age.

20-233

267. To enter, by a single woman duly qualified, and erroneously rejected, may be thereafter allowed on appeal as of the date of the application, notwithstanding the fact of the applicant's subsequent marriage.

18-45

268. The mere execution of an application confers no rights upon the applicant, and where executed by an unmarried woman, but not filed until after she had become disqualified by marriage, entry thereon can not be allowed.

35-425

269. To purchase under act of June 15, 1880, reserves the land.

4-32

270. To make homestead entry, filed by a timber-culture claimant with the relinquishment of his previous entry covering the same land, does not defeat the adverse right of a settler then on the land.

14-439

271. Irregular allowance of homestead, for land covered by the entry of another, and subsequent compliance with law by the applicant, gives him a right that will attach on the cancellation of the prior entry to the exclusion of one who then applies to enter but alleges no prior right.

14-490

272. Time within which to make, accorded the settler by the act of May 14, 1880, does not run as against the settler during the pendency of an erroneous application theretofore filed by him for the land in question.

12-631

273. When applicant contests an entry successfully, on the ground of prior settlement, he is entitled to the statutory period of three months from date of settlement in which to make, and in the computation of this period, the time between his original, and the date of legal notice of cancellation, should be excluded.

26-1

274. To file homestead declaratory statement may be made through the mail. (See 22-392.)

20-459

275. To file homestead declaratory statement made through the mail should not be received.

22-392

276. To enter, embracing noncontiguous tracts, allowed to stand, as to the con-

tiguous tracts, on relinquishment of the noncontiguous subdivision.

19-547

V. Preemption.

277. Made by an alien prior to declaration of intention to become a citizen confers no right under the preemption law, and a settler occupying such status is without protection as against an intervening adverse claim of record.

24-60

278. To file, made pending appeal from the rejected timber-culture application of another, may be received.

2-276

279. May not be filed prior to adjudication of an occupant claim in Arizona.

2-343

280. To file should not be allowed for lands covered by a pending railroad selection until after disposition of the selection.

10-454

281. To file a declaratory statement does not segregate the land, but the subsequent application of another is subject thereto.

10-616

282. To file declaratory statement for lands included within an existing indemnity withdrawal confers no right.

13-214

283. To file declaratory statement should not be allowed for land covered by pending selection at date of settlement.

12-448

284. To file should not be received for land involved in a rejected railroad selection pending on appeal, nor any action taken with respect to such land without special notice to the company.

12-18

285. To file declaratory statement should not be allowed for land within a pending order for its sale as an isolated tract.

12-397; 14-458

VI. Private Entry.

286. To make private entry of lands not subject thereto confers no right, nor can any right thereafter be acquired through such application by reason of the changed status of the land.

6-522

287. To make private entry must be in writing to the register.

6-805

288. Nonmineral affidavit may be made by applicant's attorney in case of private entry.

14-461

289. To purchase at private cash entry not considered by the department except

on appeal from the commissioner's decision. 6-805

290. Of contestant claiming a preference right does not entitle him to make entry of land not subject thereto. 8-282

291. To make private entry should not be accepted and held with time allowed for the applicant to examine the land and file the requisite nonmineral affidavit, but in the absence of any intervening claim such action will not defeat the right of entry. 14-461

292. Pending for land covered by a private claim should not be disposed of without opportunity for the assertion of rights thereunder in the event of the disallowance of such claim. 23-185

293. For reinstatement of, under act of April 7, 1896, should not be rejected on account of adverse claims, without due notice and opportunity to be heard. 23-582

VII. Timber Culture.

294. To enter, not settlement, initiates right under the timber-culture law. 23-1

295. And affidavit therewith considered as one paper in timber-culture entry. 1-157

296. Not fatally defective for want of applicant's post-office address. 3-468

297. Must be presented within a reasonable time after the execution of the preliminary affidavit. 10-325; 13-365

298. Preliminary affidavit can not be made before a notary under the act of May 26, 1890, amending section 2294, R. S. 15-249

299. In which the preliminary affidavit is executed outside the district is defective, but in absence of adverse claim the defect may be cured by amendment that will relate back. 4-491; 6-762; 7-50; 8-478; 15-403

300. To make entry confers no rights if not accompanied by requisite preliminary affidavit, and the right to make new application is subject to intervening claims. 15-249

301. Preliminary affidavit must be executed in person and within the district where the land is situated. 4-491; 6-601, 762; 14-466

302. Application must be made in person and within land district. 4-491; 6-601, 762

303. Received, noted of record, but returned for amendment of preliminary affidavit, reserves the land as against a subsequent applicant. 11-326

304. Applicants alien born must accompany their affidavits with proof that they have declared their intention to become citizens. 2-194

305. Affidavit as to citizenship, in case of entry, sufficient where it follows the statute. 4-191

306. Applicant not required to furnish more than the statutory evidence to show he has declared his intention of becoming a citizen. 3-606

307. Can not be made in good faith when applicant has not seen the land. 3-152; 6-282

308. Without tender of fees does not give right of entry. 2-276

309. With check for fees will not bar a subsequent application with payment of fees in money (filed on the same day). 2-820

310. With worthless check for fees confers no right. 21-137

311. Erroneous rejection of application and appeal protect applicant; whether he tendered oath and fees is immaterial. 2-321

312. Where erroneously rejected, the right of entry is not prejudiced and inures to the benefit of the heirs. 2-546; 24-280

313. With request to be held in abeyance will not be received pending a contest against prior timber-culture entry in same section. 2-34

314. Will be received subject to preferred right of successful contestant. (See 15-424.) 2-276, 321

315. Denying that land is timbered must be received subject to satisfactory proof of the facts. 2-274, 850

316. To make timber-culture entry allowed under rulings in force when offered. (See 6-772.) 6-217

317. Not allowed on the ground that it should have been accepted under the rulings in force when presented. 6-772

318. Where simultaneous, the privilege of making entry shall be sold to the highest bidder. 1-157; 2-687, 689; 3-535, 555

319. To make timber-culture entry segregates the land. 9-578

320. To make second timber-culture entry reserves the land. 9-383

321. The repeal of the timber-culture law by act of March 3, 1891, does not preclude allowance of, filed on that date.

15-142, 403

322. Not received at local office until after repeal of the act, is not a "lawfully initiated" claim protected by the repealing statute.

13-169; 14-417; 17-273

323. For reinstatement of illegal entry pending at passage of the act of March 3, 1891, secures no right under said act.

14-704

324. To enter filed with contest prior to repeal of the law saves the right of the applicant to perfect his entry after repeal if the entry under contest is finally canceled.

15-436; 17-53, 279; 22-182

325. A successful contestant who files, with his contest, has no right that is protected from operation of the subsequent repeal of the law if he fails to exercise his right within the statutory period.

17-117

326. A successful contestant who files, at the time of initiating contest and secures cancellation prior to the repeal of said law, but fails to exercise his preference right until after said repeal, is protected by the repealing act, where his failure is due to the fact that he did not receive notice of the cancellation.

17-147

327. A successful contestant, whose suit is begun prior to repeal of the law, but not concluded until after said repeal, is not entitled to make a timber culture, if no application to enter under said law was made by him prior to said repeal.

26-474

328. To make entry, filed by a successful contestant at the initiation of his suit, and rejected prior to the repeal of the timber-culture law, under the circular order of August 18, 1887, confers no right that can be asserted after said repeal.

16-370

329. To make entry of land withdrawn for railroad purposes confers no right, and after the repeal of the timber-culture law, there is no right in the applicant that can be recognized as within the protective terms of said repeal.

21-298; 24-434

330. For land covered by a valid subsisting railroad indemnity selection creates no right that is protected under the saving

clause in the act repealing the timber-culture law.

25-3; 27-310

331. To make second entry, pending at the repeal of the timber-culture law, is protected by the terms of the repealing act, though amendment may be necessary.

15-39

332. Based on settlement prior to the repeal of the law is not a claim protected by the statute of repeal.

15-513

333. The ruling of the supreme court in the Ard-Brandon case, that the failure of a settler to appeal from the rejection of his, did not defeat his rights, where he remained in occupancy of the land, should not be extended to a timber-culture applicant, especially in view of the repeal of the timber-culture law.

27-86, 310

VIII. Timber and Stone.

334. To purchase, under the act of June 3, 1878, does not reserve the land.

2-333, 336; 4-176, 238;

8-414; 9-335; 20-391

335. To purchase, under the timber and stone act confers no vested right.

12-58, 326

336. To purchase land previously withdrawn does not except the land from operation of the act of October 1, 1890, providing for reservation of certain forest lands in California.

12-58, 326

337. The filing of an application for land subject thereto, and to the completion of which the Government interposes no obstacle, exhausts the right of the applicant under the act.

37-145

338. No such rights are acquired by filing a timber and stone sworn statement as will upon death of the applicant prior to notice, proof, and payment descend to his heirs.

37-161

339. An application initiates a valid claim in like manner as a preemption filing; the applicant has a preferred right against everybody but the United States and one claiming a prior right to the land.

2-333, 335; 8-412; 20-391

340. An application to purchase should not be rejected on account of a temporary order of reservation made by the General Land Office after the application was filed and notice thereof given.

8-412

341. No rights acquired by application to purchase presented when the land is not subject to such appropriation. 34-380

342. Application apparently not in good faith should be rejected and those of doubtful character noted for investigation. 3-85

343. There is no authority for holding subject to submission of final proof by adverse preemption claimant. 18-306

344. Preliminary affidavit in entry compared to that required under the timber-culture law. 7-10

345. To purchase, under the act of June 3, 1878, is not abandoned by a second, for the same land. 13-598

346. Preliminary affidavit should be made upon personal knowledge of the land. 6-115; 7-10; 11-599

347. The regulation requiring applicant to personally examine the land prior to application is within the intent of the act. 11-599; 22-719

348. The regulation that the preliminary affidavit of an applicant must be upon personal knowledge based upon personal inspection of the land is a proper requirement, not in conflict with, or in excess of, the power conferred by the statute. 37-582

349. The regulation that the preliminary affidavit of an applicant must be based upon personal inspection of the land is a proper and reasonable requirement under the act, and failure to comply therewith is sufficient ground for cancellation certificate and before patent from an entryman who failed to make such personal examination takes subject to such defect and is not entitled to special consideration as an innocent purchaser. 40-85

350. To enter, may be received, though applicant has not actually been on the land, if his personal knowledge thereof is sufficiently shown. 14-436

351. Failure to personally examine the land before making, does not defeat the entry where the application is made under instructions of the local officers and no adverse claim exists. 16-560; 22-337

352. Where an applicant states in his preliminary affidavit that he has personally examined the land, and it subsequently appears from his final proof that

he had not made personal examination prior to making such affidavit, his application will be rejected. 11-599; 32-606

353. Purchase will not be allowed where applicant states in his preliminary affidavit that his knowledge of the tract is based upon information and belief and testifies in final proof proceedings that he has never personally examined the land. 32-631

354. Where the first legal applicant for a particular tract after the opening presents a timber and stone declaratory statement therefor, it should not be suspended until expiration of the 90-day period to await the assertion of a possible settlement claim for the same land, but should be placed of record and proceeded with in the usual manner, the date for submission of proof thereon, however, being set beyond the 90-day period; and any subsequent applicant for the same land, claiming prior settlement, should be notified of the conflicting timber and stone application and a hearing ordered upon the allegation of prior settlement. 37-476

355. Published notice of, sufficient where it contains the statutory requirements and is made on the form furnished by the Land Department. 21-121

356. To make a timber-land entry may be changed as to the land included therein on a satisfactory showing that after the date of the original application and prior to the time fixed for the completion of the entry the timber on the tract first applied for was destroyed by a forest fire, through no fault of the applicant. 22-424

IX. With Contest.

See VII HEREOF.

357. To enter, filed by a homestead contestant with his contest serves no purpose. 2-40, 65; 3-209; 4-424, 462; 22-96

358. To enter, must be filed with application to contest a timber-culture entry. 2-245, 275, 285, 294

359. A request, in the affidavit, that the contestant "be allowed to enter said tract under the homestead laws" is sufficient. 2-42

360. For the land, with new contest, may be filed where the first was dismissed, in the absence of adverse rights. 2-245, 290

361. For the land, must be accompanied by affidavit showing qualifications. 2-292

362. To enter, filed with an invalid contest, but not accompanied by the required affidavit as to the qualifications of the applicant, or a tender of fees, is not sufficient to reserve the land as against the subsequent application of another. 18-557

363. Affidavit as to qualification, with application to enter, though informal, sufficient in case of timber-culture contest. 3-419

364. Is not barred by a pending contest which is illegal (without application for the land, or with application to preempt) or void on its face (alleging failure to cultivate the first year after entry). 2-248, 259, 282, 293, 297

365. The offer to file an application for the land with a contest against a timber-culture entry protects the contestant, though he failed to file it because erroneously informed by the local officers that it was unnecessary. 2-245, 319

366. No rights secured under, accompanying a timber-culture contest, filed at a time when the land is involved in a prior contest, if the proceedings under the prior suit result in the cancellation of the entry. 29-537

367. Timber-culture, considered as the foundation for action in case of contest. 4-540

368. A mere expression of willingness to file an application for the land with the contest (timber culture), which the local officers declared to be unnecessary, without tender of it, does not protect the contestant. 2-290

369. Of a timber-culture contestant is not defeated by the possession of a defaulting entryman. 4-508

370. To make timber-culture entry, filed with contest, reserves the land pending final action thereon. 9-161; 13-124

371. To enter, filed with a timber-culture contest, is equivalent to entry so far as the rights of contestant are concerned. 7-335

372. To make timber-culture entry on a quarter section, filed with a contest, precludes while pending the allowance of a similar application by another for a different tract in the same section. 14-315

373. To enter, filed by a successful contestant at the initiation of a timber-cul-

ture contest, when allowed, takes effect as of the date thereof, to the exclusion of intervening claims. 7-330

374. The right of an actual settler on land within a railroad indemnity selection who applies to enter, accompanying his application with an affidavit of contest against the selection, and thereafter dies before action on his application or contest, descends to his heirs, and may be perfected by them on elimination of the selection. 27-621

375. To make timber-culture entry, filed with a timber-culture contest, entitles the heirs of deceased contestant to the right of entry on the successful termination of the contest. 9-161; 14-65

376. To enter, filed with timber-culture contest, fails on the rejection of the contest. 7-352

377. Rights secured by, filed with a timber-culture contest, depend upon the establishment of the charge, and if the contest fails, the application falls with it. 15-405

378. The rejection of an application to contest carries with it the rejection of the accompanying application to enter. 9-211, 569; 11-102

379. To enter, filed with a timber-culture contest, takes effect as of the date filed, on cancellation of the entry under attack, and excludes intervening adverse claims. 13-401

380. To enter, filed with a timber-culture contest that is accepted and then dismissed on technical grounds, takes effect as of the date filed, on the subsequent relinquishment of the entry, and precludes other disposition of the land until contestant has been heard. 13-289

381. To enter, filed by a timber-culture contestant, confers no right if abandoned prior to termination of the contest. 9-193

382. To enter, filed by a second contestant with his affidavit of contest against a timber-culture entry, reserves the land, subject only to the rights of the first contestant. (See 23-119.) 7-26; 10-532; 15-173, 184

383. To enter, filed with a timber-culture contest, is dependent upon the result of the contest, whether it be the first or second contest; and where for any cause the

second contest fails, or never attaches by reason of cancellation of the entry under the first contest, the application filed with the second contest does not serve to reserve the land after the disposal of said contest, but falls with it, and confers no right upon the applicant. 23-119

384. To enter, filed with a second contest, does not secure any right to the applicant if the successful contestant in the prior suit fails to exercise his preferred right. 23-378

385. Filed with contest confers no right if not followed up by entry after judgment of cancellation. 2-50

386. To enter, filed by timber-culture contestant, may be amended at the hearing. 5-211

387. To enter under the timber-culture law, filed with a timber-culture contest, estops the contestant from claiming another tract under said law as against a subsequent settler thereon. 13-283

388. To enter, filed with a contest, stands rejected without further action if the contestant fails to exercise his preferred right within 30 days after notice of cancellation. 13-670

389. Instructions of August 18, 1887, to the effect that all, filed with timber-culture contests shall stand rejected if not perfected within 30 days after notice of cancellation, are not applicable if the application is not returned to the local office. 22-182; 23-529

390. To enter, filed with a timber-culture contest, should be returned for allowance on successful termination of the suit, after due showing of qualifications and payment of fees. 15-436

391. Failure of successful contestant to make, until after repeal of the law, defeats the exercise of such right under said law, though such failure may be due to negligence of the local office. 15-539

X. With Relinquishment.

392. Accompanied by a relinquishment is at once effective on the filing of the relinquishment. 1-122, 155; 4-188; 10-139

393. Accompanied by relinquishment relates back upon cancellation, under section 1, act of May 14, 1880. 4-123

394. To enter accompanying a relinquishment takes the land as against a settler on the land. 5-149

395. To enter, filed immediately after relinquishment of a previous entry of the tract, is defeated by the prior settlement right of a third party. 13-148, 192; 16-386

396. Accompanied by relinquishment should be received subject to adverse claims. 5-451

397. To make entry pending, will take precedence over one filed with a relinquishment. 8-559

398. To file a declaratory statement, accompanied by relinquishment, presented during the pendency of a contest, can only be received subject to the right of the contestant. 9-269

399. Accompanied by relinquishment of the prior entry of another may be received, though the affidavit therewith is executed prior to cancellation of said entry. 1-121

400. As between one applying to enter under a relinquishment and another applying for the right of contest, the judgment of the register at the time, on the question of priority, will be accepted in the absence of clear showing of error therein. 13-541

401. To enter, accompanied by a relinquishment of the prior entry of another, filed simultaneously with an affidavit of contest, defeats the right of the contestant to proceed against the entry thus vacated. 14-144

402. To enter, filed by a contestant with a relinquishment, should not be allowed during the pendency of a second contest charging the speculative character of the first. 18-358

APPROXIMATION.

See ALASKAN LAND, 31; ENTRY, III; HOMESTEAD, X, h; MINING CLAIM, 800; RAILROAD LAND, 359; RECLAMATION, 96; RESERVATION, 551-552.

ARID LANDS.

See DESERT LAND; RECLAMATION; RESERVOIR LANDS.

1. Circular of August 5, 1889, under act of October 2, 1888, directing reservation of lands included therein. 9-282

2. Circular of August 9, 1890, calling attention to former instructions and the reservation of lands under the statute.

11-220

3. Circular of September 5, 1890, under act of August 30, 1890, repealing in part the original act.

11-296

4. Instructions of October 5, 1893, with respect to insertion of reservation of right-of-way privileges in patents and final certificates issued on original entries made after the act of October 2, 1888.

17-521

5. All rights of entry are suspended on lands falling within the plan of irrigation contemplated by the act of October 2, 1888.

13-45

6. Mineral lands not excepted from the operation of the act of October 2, 1888.

15-418

7. Homestead entry of, is protected by the act of August 30, 1890, and may be perfected if not selected for a reservoir.

14-123

8. The withdrawal of, under the act of October 2, 1888, did not affect or impair rights acquired by settlement and pre-emption filing prior to the passage of said act.

25-221

ARIZONA.

See PRIVATE CLAIM, V; SCHOOL LAND, 69; STATES AND TERRITORIES, 33.

ARKANSAS.

See STATES AND TERRITORIES, 34.

ARKANSAS SUNK LANDS.

1. The unsurveyed lands in the basin of the St. Francis River, lying beyond the exterior lines of the adjoining surveyed townships, and commonly known as the "sunk lands," are held to be public lands and directions given for their survey with a view to disposal under the public-land laws.

37-345, 462

2. The order directing survey of, with a view to disposal under the public-land laws, does not contemplate the correction of any of the lines of the former survey which may have been properly surveyed, and if any of the meandered lines of that survey are found actually to extend to the

edge of permanent bodies of water they will not be disturbed.

37-462

ARMED OCCUPATION ACT.

See PATENT, 193; RAILROAD GRANT, 572.

1. A permit to settle on a specified tract is a condition precedent to obtaining title thereto under the act of August 4, 1842.

21-87

ASPHALT.

See MINERAL LAND, 29, 61; RAILROAD GRANT, 877.

ASSIGNMENT.

See DESERT LAND, II, e; HOMESTEAD, X, f.

ATTORNEY.

See AFFIDAVIT; APPEARANCE; PRACTICE, IX.

1. Qualifications required of, who practices before the department.

3-113

2. Regulations as to recognition of. Circular of 1886.

5-337

3. Regulations affecting the practice in the local offices. Circular of March 19, 1887.

5-508

4. Regulations governing recognition of agents and attorneys before district offices.

35-534

5. Right to appear and file motion not recognized until compliance with regulations with respect to admission to practice before the department.

24-525

6. The restrictions of section 190, R. S., apply to all the departments.

4-179

7. The acceptance of a new appointment after June 1, 1872, brings such person within the inhibition of section 190, R. S., though his original appointment may have been prior to such date and his service thereafter continuous.

4-179

8. A claim for title to public land is a "claim against the United States" in the meaning of section 190, R. S., and the disability therein created extends to the prosecution of such a claim. (Overruled, 17-216.)

4-179

9. The phrase "claim against the United States," in section 190, R. S., means a money demand against the United States;

and the inhibition in said section does not extend to a former employee who appears before the Land Department in behalf of an applicant for a tract of public land.

17-216; 33-137

10. Official order under act of July 4, 1884, as to former employees of the department. 4-220

11. Objection to, on the ground that he is disqualified under section 190, R. S., comes too late when raised for the first time on review. 13-615

12. A clerk in a local office is within the provision of section 190, R. S., and can not appear, during the period specified, in a case that was pending in said office while he was a clerk therein. 11-25

13. Holding appointment as United States commissioner will not be admitted to practice before the department. 4-55

14. Will not be recognized in a case where he is an officer of the department. 20-523

15. Must file oath of office. 5-341

16. In good standing, admitted to practice before the department, is not required to file written authority to appear on behalf of his client. 1-480; 18-88; 24-472

17. At law, who appears before the local office, required to file written appearance, stating specifically for whom he appears. 4-299; 6-509

18. The fact, that an intermediate assignor of soldiers' additional rights guarantees the same is not sufficient reason for recognizing him as attorney for applicants to locate such rights, unless an appearance is filed in each case showing authority to represent some party in interest. 37-674

19. Failure to file written authority for appearance before local office will justify refusal to recognize said attorney, but the absence of such authority can not be afterwards taken advantage of by one who has otherwise authorized such appearance. 28-8

20. In fact required to file written authority. 4-299; 6-509

21. Address of and name of party represented must be stated. 5-343

22. Must be recognized under departmental regulations prior to the exercise of rights. 22-434

23. Required to file written authority in hearings under circular of July 31, 1885. 4-504

24. The statute authorizes the requirement of July 31, 1885. 4-527

25. Circular of July 31, 1885, as to written authority, not applicable where appearance was entered prior thereto. 4-527

26. Circular requirement of July 31, 1885, in appearance for alleged fraudulent entrymen not applicable in practice before General Land Office or department. 5-340

27. Empowered to act before Land Department under words of general authority. 3-262

28. Authority presumed from appearance. 5-342, 400

29. Authority presumed, but not conclusively, and may be inquired into. 6-269, 509

30. Authority to enter appearance presumed from subsequent employment. 6-335

31. If authority is questioned, due showing may be made in response. 9-525

32. Authority to appear can not be questioned by one who, in the service of papers in the case, relies upon notice to such attorney. 9-11

33. Or agent can not substitute another, unless by prior power of substitution or subsequent ratification. 2-214

34. A power of attorney is revoked by principal's death. 2-241

35. In case of widow's marriage or death her attorney does not thereby become the children's attorney. 2-241

36. Death of client terminates authority. 11-604

37. Is without authority to enter appearance where his client dies prior to the hearing. 11-604

38. Action of, in dismissing a suit without authority of the party he represents should not conclude the interest of such party. 14-373

39. Having been employed to do certain things, the attorneyship cases with the performance of the engagement. 3-127

40. Authority to act in a case is concluded by relinquishment of the claim he is engaged to represent. 21-95

41. Power properly revoked on withdrawal of claim. 5-222
42. Action dismissing proceedings conclusive on party he represents, where appearance is general and no showing of fraud or collusion is made. 19-211
43. Where a party is represented by two, of record, he is bound by action of either, and will not be heard to plead a private understanding between himself and attorneys by which the authority of one of said attorneys is limited. 25-34, 294
44. The right to bind client in the compromise of a case will not be recognized, in the absence of specific authority therefor. 19-266
45. Whether a power of attorney given to an attorney while disbarred may be used after his reinstatement: *Quare*. 2-214
46. Pending the adjustment of a claim the revocation of a power of attorney will be recognized on proper showing. 3-261
47. Claim of, to a power coupled with an interest not recognized in case of one representing alleged derivative claimants of a State, where want of good faith in the claim is apparent from the record. 6-403
48. A power executed and delivered, that does not contain the name of the appointee, is with an implied authority to complete the instrument, and make it effectual, by filling in the blank, where it is apparent that such was the intention of the party executing the power. 19-64; 21-228
49. Does not become a party in interest by advancing money for the prosecution of a contest. 11-65
50. Has no lien that the department can enforce by refusing to recognize the entryman's right to relinquish his entry. 15-307
51. Practicing before the department presumed to know the rules of practice. 3-250; 6-236
52. Rules as to, established in the courts followed so far as practicable in the department. 5-400
53. Not of record in a case may not inspect the papers. 2-222
54. Extent of right to examine records in the department. (Rule of Practice 108 amended.) 4-336
55. Right to examine record preliminary to actual appearance. 5-400
56. Right to examine papers upon which action has been taken recognized. 5-400
57. In good standing before Land Department is entitled to inspect reports of special agent on which final action has been taken by General Land Office adverse to the interest of his client. (See 38-464.) 24-379
58. In good standing may examine records, etc. 5-340
59. Appearing as *amicus curiæ* may file a brief with due service of copies. 17-369
60. Brief containing scurrilous and impertinent matter will be stricken from the files. 9-130; 16-130
61. Brief that contains charges of corruption against officers of the Land Department will be stricken from the files. 14-445
62. The judge and clerk of the same court can not act in public-land cases, one as attorney before the other, and the other judicially, in the same cases. 3-112
63. Of record in a case can not, as a notary public or clerk of court, administer oaths in the case. (See 3-98.) 2-212
64. As notary, may, if not prohibited by local laws, administer oaths to his client in the preparation of contest affidavit. 4-126; 24-45
65. Not to act as notaries. (See 24-45.) 4-299; 20-523
66. Evidence in cases contested should not be taken before, acting as notary. 3-98, 250
67. Signature as one of two witnesses to an affidavit of contest does not invalidate it. 2-217
68. Stipulation as to matters of evidence binding upon the parties. 11-71
69. May fill in the date of entry (timber culture) in an application for contest. 2-260
70. May not alter or amend an application for entry (timber culture) so that it shall embrace a different tract. 2-261
71. Rights not acquired by acting upon erroneous information by. 2-56
72. Action of, conclusive upon his client. 4-267
73. Rights lost through action of, not restored after intervention of adverse claim. 4-267

74. Apparently representing different and conflicting claims suggests speculative collusion. 4-197

75. Disbarred from practice before the Land Department will nevertheless be recognized as a notary public. 2-214

76. Acting for entryman and for adverse claimants, and also endeavoring to secure the land for himself, will be disbarred. 2-62

77. Proceedings for the disbarment of, should be reported to the department. 9-520

78. It is not the province of the Land Department to inquire into conduct of attorneys in matters not affecting the title to public land. 2-616; 7-356

79. Engaged in fictitious and speculative contests should be reported to the commissioner. 3-120

80. Who procures a fraudulent entry to be made should be disbarred. 17-28

81. Speculative collusion suggested by alleged agreement. 4-268

82. Questions between client and, not considered where the claim under prosecution is abandoned. 7-356

83. Appearing on behalf of a contestant can not at the same time assert a right to the land embraced in such proceedings. 22-86

ATTORNEY GENERAL.

1. Opinions of, advisory, and not obligatory upon the heads of departments. 7-100

2. Cases not referred to, except where the Secretary of the Interior is in doubt as to the correct conclusion. 5-277

BITTER ROOT VALLEY LANDS.

See INDIAN LANDS, 273-285; RAILROAD GRANT, 594-596; RESERVATION, 87-88; TIMBER AND STONE, 27-29.

BORAX.

See MINERAL LAND, 29-30, 156; MINING CLAIM, 840.

BOUNDARY OF STATE.

See STATES AND TERRITORIES, 20-24, 110, 128.

BUILDING STONE.

See MINERAL LAND, 49-56; MINING CLAIM, 845; SCHOOL LAND, 17, 25; STONE LAND, 1-2; TIMBER AND STONE ACT, 125-127.

BURDEN OF PROOF.

See EVIDENCE, IV; MINERAL LAND, 75-99; MINING CLAIM, 558; SWAMP LAND, 174-177; TIMBER AND STONE ACT, 193-194.

BURNED TIMBER ENTRY.

1. Circular of February 2, 1895. 20-98

CALIFORNIA.

See PRIVATE CLAIM, VI; SCHOOL LANDS, II, c, 35, 37, 95, 121; STATES AND TERRITORIES, 35-85; SWAMP LAND, VII.

CANALS AND DITCHES.

See RIGHT OF WAY, V.

CANCELLATION.

See ENTRY, X; JUDGMENT, 5-15.

CANE ISLAND.

Instructions of December 7, 1909, relative to disposal of Cane Island, Arkansas. 38-330

CAREY ACT.

See DESERT LAND, III; SURVEY, 261-274.

CEMENT.

See MINERAL LAND, 34, 41.

CEMETERIES AND PARKS.

See ALASKAN LANDS, 29.

1. Circular of May 23, 1892, under act of September 30, 1890, authorizing cities and towns to make entry for park and cemetery purposes. 14-560

2. Circular of June 12, 1903, relative to acquiring title to parks and cemeteries. 32-156

3. Paragraph 1 of circular of June 12, 1903, amended. 32-512

4. Circular of March 26, 1907, under act of March 1, 1907, relative to entries by religious, fraternal, and private corporations or associations for cemetery purposes. 35-480

5 General circular of August 7, 1909, relating to townsites, parks, and cemeteries. 38-92

CERTIFICATE.

1. Final, until approved by the General Land Office, is only *prima facie* evidence of equitable title. 7-86; 8-269

2. Issuance of final, by local office does not prevent the Land Department from inquiring into the good faith of the transaction, and canceling the entry if allowed in violation of law. 8-383; 17-468; 27-716

3. Final, issued on timber-culture proof prematurely made should not be canceled, but suspended. 7-231

4. Of entry at variance with application not conclusive. 4-422

5. Rights not prejudiced by delay in the issuance of land. 6-218;

7-292, 455; 8-268, 475; 9-101;
10-144; 14-32; 17-293

6. Final, issued without authority is void. 6-444

7. Final, issued to preemptor is only *prima facie* evidence of payment. 2-48

8. Issuance of final, not a matter of judicial inquiry prior to patent. 15-145

9. Error in final, as to the name of the entryman, may be corrected *nunc pro tunc*. 21-377

10. Loss of swamp indemnity, being shown, a certified copy of the record may be issued in lieu of the original. 19-257

11. Where a person has complied with all the conditions necessary to obtain title, and his proof has been accepted and final certificate issued thereon, he acquires a vested interest in the land and becomes *prima facie* the equitable owner thereof and entitled to a patent; and anyone thereafter attacking the entry assumes the burden of establishing such illegality in the procurement thereof as would defeat the issuance of patent thereon. 31-87

12. Final, is without validity if it be determined, as the result of proceedings

instituted prior to the expiration of two years, that the person to whom it issued had not, at the date of final proof, earned title by compliance with legal requirements, and nothing done after final proof can be accepted as curing such default; nor does the death of the person to whom the certificate issued affect the right of the Land Department to investigate the validity of the entry and cancel the same if found invalid. 36-4

CERTIFICATE OF DEPOSIT.

1. Circular instructions concerning.

3-350, 599; 4-488

2. Issued under section 2401 *et seq.*, as amended by act of August 20, 1894. See circular of August 7, 1895. 21-77

3. On account of surveys is assignable. 3-4

4. Certificates of deposit may be assigned under act of March 3, 1879. 1-309

5. Issued on application for survey is assignable under act of March 3, 1879, whether issued before or after said act. 12-23

6. To secure survey receivable in payment for any public land entered under the homestead or preemption law. 1-522

7. For survey returned if the entry fails. 1-533

8. In excess of the cost of land entered by one person may be used by another on making his payment. 3-348

9. For survey issued before March 3, 1879, used only for purchase of lands in township surveyed. 4-328, 488

10. Issued for deposit made since the act of August 7, 1882, to recover excess occurring under contract made before said act, is receivable for any public land entered under the homestead or preemption law. 4-326, 488

11. Certificates issued for deposit to secure the survey of a private claim can not be used in payment for lands entered under the preemption or homestead laws. 2-463

12. Used in payment for land may be returned where the entry fails and the certificate remains in the control of the commissioner. 1-533

13. The provisions of section 2403, R. S., as amended by act of March 3, 1879, with

respect to the assignment of, are not applicable to certificates issued on deposits for surveys in Alaska. 22-289

14. Issued on account of deposit to secure the survey of Alaskan land can not be accepted in payment therefor. 26-305

CERTIFICATION.

See PATENT, IV.

CERTIORARI.

1. Application for, should be under oath, and the affidavit should, in effect, set forth the verity of the allegations relied upon as the basis of the application. 16-125; 17-100

2. Application for, must be under oath. 4-31, 558; 6-605; 11-238

3. Petition should be accompanied by copy of decision complained of or specific recital thereof. 2-68;

3-184; 4-31; 5-588; 9-648; 10-159; 16-481; 33-160

4. The rule requiring a copy of the commissioner's decision to accompany the application has been uniformly followed though not included in the Rules of Practice. 13-635

5. Failure to file copy of commissioner's decision with application can not be cured by filing copy after the application is dismissed. The department may waive this objection. 13-635

6. Application for, should be accompanied by a copy of the decision denying the right of appeal. 14-176

7. Rule 85 provides for a period of suspension of the commissioner's decision, where the right of appeal is denied, but is no limitation on the power of the Secretary to grant an application for, even though not filed within said period. 18-41; 20-287; 24-385

8. Delay in application for, and the allowance of an adverse entry under the decision complained of, will not defeat the right of the applicant to a decision on the merits where rights of third parties are not affected and the status of the adverse party is not due to delay on the part of the applicant, and where the entry of such party is made with full notice of applicant's rights. 24-385

9. Notice of application for, should be served upon the opposite party. 13-673

10. Notice of application for, need not be served on attorney of opposite party where service is made on the party himself. 13-520

11. Application for, should set forth specifically the grounds on which it is made and the facts relied upon 1-565, 628; 6-605; 9-170

12. Assignment of errors not required on application for. 1-565

13. Application for, suspends action in case. 4-314

14. On the filing of an application for, the local officers should be directed to suspend all action under the decision in question. 21-464

15. Application for, when filed in the General Land Office, should be forwarded. 4-314

16. Is not a writ of right, but issues in the discretion of the petitioned tribunal on a *prima facie* showing of substantial injustice in the action of the court below.

1-565; 2-769; 3-503; 4-32; 5-206; 9-172; 10-160; 23-529

17. Applicant for, must make a *prima facie* showing of matter subject to supervision, so that a reasonable presumption of error or oversight is raised and the department convinced that its intervention is required for proper administration of public business or prevention of possible injury. 1-569; 2-215, 419; 3-183, 593

18. When it is made to appear that the supervisory authority of the Secretary should be exercised, the application should be granted whether made formally or otherwise. 7-494

19. Failure to file an appeal in time will not of itself deprive a litigant of the right to the relief he may be justly entitled to; but such relief will be granted, in a proper case, through the exercise of the supervisory authority of the Secretary, although the right of appeal may have been properly denied. 33-160

20. Originated in the requirement that on denial of right of appeal the case shall be forwarded to the department. 1-628

21. Instituted to secure a review where the right of appeal does not exist. 3-325; 4-269, 314, 559; 17-111

22. Provided to cover cases where the commissioner formally decides against the right of appeal. 4-314; 5-673

23. Is designed as a remedy in cases in which the commissioner formally decides that a party has no right of appeal, and is not intended to perform the office of an appeal in case a party fails to appeal in time. 33-39

24. Will be denied if it does not appear that the applicant has first sought relief by appeal. 11-558; 20-178; 24-244

25. Will not be denied on the ground that applicant did not seek relief by appeal, where the General Land Office erroneously denies the right of appeal before an attempt to exercise it is made. 21-90

26. Matter which might and should have been set up on appeal, but was not within the prescribed time, is not good ground for. 9-668

27. Not granted where the right of appeal is lost through failure to file the same in time. 4-331; 5-235;

6-122; 12-62; 13-397,
478; 14-154; 20-89

28. Will not issue where it is apparent applicant has not been diligent in the prosecution of his claim before the department. 20-137

29. Will not lie where the right of appeal to the department is lost through failure to appeal from the local office. 11-473

30. Will be granted where the right of appeal is denied on the ground that it was exercised out of time, and the record does not show that notice of the decision appealed from was served on the applicant. 19-472

31. May be allowed where the appeal is dismissed because taken out of time, and it is shown that applicant was misled, as to the time for appeal, by the action of the General Land Office. 18-41

32. May be granted where the failure to appeal in time is due to a mistake that is satisfactorily explained, and where such action will not injure innocent parties. 15-527; 17-63; 24-570

33. Will not be granted if it is apparent that the failure to be heard on appeal, or through motion for rehearing, is the result of the applicant's negligence. 8-396

34. Will lie where entry is canceled without notice and appeal denied because not filed in time. 4-11

35. Writ will not issue though the case is *ex parte* and the right of appeal is lost through the negligence of attorney. 6-122

36. Will not be allowed where the right of appeal is lost through the attorney's negligence. 12-388; 14-176; 18-452

37. Application for, on the ground that the right of appeal was lost through fault of applicant's attorney, must be denied in the absence of any specific charge of fraud or collusion on the part of said attorney. 25-345

38. Might be allowed, on proper showing, in lieu of appeal when the latter was not filed in time. 4-226

39. Appeal may be allowed in lieu of, where the appeal was delayed on account of temporary closing of local office. 2-211

40. Where the application is an appeal in effect, it may be treated as such. 5-392

41. May be granted if it appears that applicant is entitled to relief, though he may have failed to appeal in time. 8-423

42. Will not be granted where the right of appeal is not asserted, nor denied by the commissioner. 15-290

43. Will not be granted unless the right of appeal has been denied and such denial results in serious injury to the applicant. 10-491

44. Application for, will not be granted unless it is shown that the commissioner's decision is erroneous, though he may have erred in declining to transmit the appeal. 14-67; 20-544; 33-160

45. Will not be granted if petitioner fails to show that the decision complained of is erroneous, and did not render substantial justice. 24-570

46. An applicant for, who alleges that the commissioner erred in not reviewing the decision of the local office under rule 48 of practice, should set forth specifically the alleged irregularity, or wherein, with respect to the interest of the Government, the decision is contrary to existing laws or regulations. 25-345

47. Will not be granted in the absence of a *prima facie* showing that calls for reversal of the action below. 19-331

48. Will not be granted if the right of appeal is not wrongfully denied, unless

the facts set forth show that applicant is entitled to relief under the supervisory authority of the Secretary. 10-572;

15-126; 18-91; 20-116; 21-122; 25-466

49. Though applicant may not be entitled to, on the ground of the wrongful denial of his appeal, yet, if justly entitled to relief, it may be granted, under the supervisory authority of the Secretary. 19-32

50. Will not lie where applicant has suffered no material injury, or where the petition fails to allege such an injury. 3-183,

594; 4-28, 277, 559;

8-485; 10-159; 20-130

51. Will not be granted if substantial justice has been done, though the proceedings may have been defective and informal. 9-170; 11-473

52. Not granted if on the showing made it is apparent that applicant's appeal if before the department would be dismissed. 6-315; 11-78, 430; 17-298; 24-230, 26-348

53. Not granted where it is apparent the decision below would be affirmed if before the department. 14-205; 21-109; 23-492

54. Not granted merely because appeal was improperly denied, but it must further appear on the face of the petition and exhibits that the decision complained of was erroneous. 36-400

55. The Secretary may issue the writ to the local office in a case that calls for such action. 10-689; 25-76

56. Will not lie to review an interlocutory order of the local office where the ordinary methods of procedure afford relief. 10-689

57. An application for, directed to the local office, must be denied, where it is apparent that if the appeal from the action of that office had been forwarded it would be dismissed. 25-466

58. Will lie to review an order of the General Land Office for a hearing. 5-175; 13-259

59. To review an order of the commissioner directing a hearing will not be granted unless a clear abuse of discretion shown. 3-530; 10-250, 491

60. Discretionary authority of the commissioner will not be controlled by the department in the absence of an apparent abuse. 5-412;

9-530, 626, 633; 11-260, 273

61. Supervisory authority of the Secretary should be invoked by, when abuse of the commissioner's discretionary authority is alleged. 9-530

62. Will issue to review final action of the General Land Office that is in effect the determination of a substantial right, and where the right of appeal therefrom is denied. 20-211

63. Where on motion for review new facts are set up and a hearing asked, and the motion is denied by the commissioner, the right of the applicant, on due showing made, may be reviewed under a writ of certiorari. 21-130

64. Supervisory authority may be exercised on motion for review of a decision denying the writ. 8-423

65. The supervisory authority of the department is exercised under certain rules formulated to avoid confusion in practice. 8-396

66. Supervisory authority not exercised except upon grounds appealing to executive discretion. 1-630

67. Does not lie to correct errors arising from negligence of parties. 1-570

68. Will not be granted upon allegation by a stranger that contest was initiated for speculative purposes. 2-67

69. Will be denied where it appears that applicant is not a claimant for the land under any of the public-land laws. 20-287; 21-90

70. Granted where it appears that the whole case was not before the commissioner. 4-31

71. Will be granted where it appears that the record should be reviewed for the consideration of the errors alleged. 12-230

72. Rule of June 19, 1885, requiring application to be filed in General Land Office. 3-595

73. Application for, denied for want of formality, can not be amended, but is no bar to a new application. 11-346

74. Where the applicant for, alleges the right to be heard on appeal as a contestant, he must affirmatively show by what proceedings he acquired such status. 14-42

75. On application for, final judgment may be rendered on the merits of the case

without calling for the record, where the showing made justifies such action.

18-420

CHEROKEE NATION.

1. Courts of, recognized as courts of record. 4-535

CHEROKEE OUTLET.

See OKLAHOMA LANDS; TOWNSITE, 105, 121.

1. Circular of September 1, 1893, with the President's proclamation opening lands to entry. 17-225

CHIPPEWA PINE LANDS.

See INDIAN LANDS, 223-230.

CIRCULARS.

See TABLES OF, PART 2; STATUTES, 49, 58-59.

1. Intended to be in harmony with the law and general rules of practice 5-671

2. Regulations provided by, authoritative after promulgation. 5-134

3. In conformity with the statutes have all the force and effect of law. 2-709; 5-169; 6-111; 9-86, 189, 284, 353; 12-138; 14-587

4. Regulations made by, will not be permitted to defeat a statutory right. 2-283; 5-429

CITIZENSHIP.

See ALIEN; NATURALIZATION.

1. Proof of, in case of entry, sufficient where it follows the statute. 3-606; 4-190; 6-620

2. Voting not conclusive evidence of, but raises a presumption which may be accepted in the absence of proof to the contrary. 9-173

3. Evidence of voting will raise a presumption of, as fraud on the part of the voter is not to be presumed. 19-270

4. Exercise of the elective franchise by an inhabitant of a State the laws of which

restrict the right to vote to citizens of the United States raises the presumption of citizenship. 36-352

5. Secondary evidence of, accepted. 6-631

6. Children born of a white man (a citizen of the United States) and an Indian (his wife) are by birth citizens of the United States. 13-683; 24-311; 30-606

7. An Indian born within the United States who has abandoned the tribal relation, and adopted the habits and customs of civilized life, is a citizen of the United States. 22-215

8. Membership in an Indian tribe may be established by the laws and usages thereof, although such recognition may not be in harmony with the general rule that among free people the child of married parents follows the condition of the father. 19-311; 26-71

9. The act of June 7, 1897, providing for recognition of rights of children born of a marriage between a white man and an Indian woman by blood, is inapplicable to a child born of a half-breed woman and a white man, where such woman is not recognized as a member of the tribe, or as having any tribal rights. 27-386

10. A corporation organized under the laws of a State is a citizen of the United States. 19-141, 148; 22-1; 26-503

11. A corporation is a citizen of the State in which it is created and can have no legal residence beyond the boundaries of such State. 33-680

12. Proof of, on behalf of a corporation, shown by authenticated certificate of incorporation. 22-83

13. Proof of, by a corporation, is made by filing a copy of its articles of incorporation, certified under seal of the officer having custody of the records where recorded. 27-351

14. The children of a citizen of the United States, though born in a foreign country, are citizens of the United States by virtue of their father's citizenship. 19-282

15. A citizen of the United States who, in order to practice his profession while residing in a foreign country, takes an oath of allegiance to the reigning ruler thereof, without renouncing his own citi-

zenship, does not thereby expatriate himself. 19-282

16. A presumption as to the continuity of alienage, when once shown, may be overcome, where no record of naturalization is found, by a presumption of, growing out of a long-continued exercise of the rights and duties of a citizen; and the son of an alien, in such case, is entitled to the benefit of such presumption of citizenship, where no record of the naturalization of the father during the minority of the son can be produced. 26-565

17. The residence of an alien in this country the last three years of his minority, who is otherwise within the terms of section 2167, R. S., qualifies him in the matter of, to the extent that he may initiate a homestead claim by settlement, without having previously filed a declaration of intention to become a citizen. 28-138

18. A homestead entrywoman, a citizen of the United States, does not, by her marriage to an alien, become an alien, and disqualified to hold her homestead, where she does not change her domicile to the country of her husband's allegiance, or otherwise indicate an intention to change her citizenship, but continues to maintain residence upon the land covered by her entry. 33-230

19. One who at the date of the admission of North Dakota into the Union was an inhabitant and recognized as a member of that political community became by such admission a citizen of the United States. 36-352

20. One who at the date of the admission of South Dakota into the Union was an inhabitant and recognized as a member of that political community became by such admission a citizen of the United States; and his minor children at that time residing in the United States thereby, by virtue of section 2172, R. S., also became citizens. 38-257

CLAIMS.

See ACCOUNTS.

1. Under a statute must be brought strictly within the same. 2-79

2. Can not be made by mere words, without attempt to reduce to possession

land in another's possession by color of law. 2-186, 637

3. He who takes the initial step, if followed up to patent, is deemed to have the better right. 1-405;

2-167; 4-582; 6-631; 9-443; 10-228

CLAY.

See MINERAL LAND, 31-34; MINING CLAIM, 831-835; RAILROAD GRANT, 875.

COAL LANDS.

See ALIENATION, II; APPLICATION, 218; MINERAL LAND, 62-63, 73, 168-195; RAILROAD LAND, 10-11, 83-84.

I. Generally.

II. Entry.

III. Declaratory Statement; Preference Right.

IV. Withdrawals; Classification; Price.

V. Alaska.

VI. Acts of March 3, 1909, and June 22 and 25, 1910.

I. Generally.

1. Sale of, circular of July 31, 1882.

1-687

2. Paragraphs 30 and 31 of regulations of July 31, 1882, amended. 32-382

3. General regulations, approved April 12, 1907. 35-665

4. Supplemental regulations of April 24 and May 20, 1907. 35-681, 683

5. Instructions of April 29, 1908, amending paragraph 16 of regulations of April 12, 1907. 36-368

6. Circular of November 30, 1907, amending paragraph 18 of regulations of April 12, 1907. 36-192

7. And iron lands in Alabama, circular of April 9, 1883. 1-655

8. Covered by a homestead entry on March 3, 1883, must be publicly offered on the cancellation of such entry (Alabama). 4-367

9. Prior to act of March 3, 1883, were open to entry and private sale the same as agricultural land, subject only to certain limitations as to price and quantity. (Alabama.) 6-493

10. Application for the survey of, under the act of August 20, 1894; see circular of August 7, 1895. 21-83

11. Coal lands are mineral lands within the meaning, generally, of the laws relating to the public lands. 31-29

12. Coal lands are mineral lands within the meaning of the act of June 4, 1897 (forest reserves). 30-92

13. Coal lands are not mineral lands within the meaning of the act of June 3, 1878 (timber cutting). 2-827

14. The words, "the existing mining laws of the United States," construed, in legislative enactments, as embracing sections 2347 to 2352, R. S., commonly known as the coal-land law. 30-92

15. That coal may be found upon land claimed by a preemptor is immaterial if not known at date of entry. 3-169

16. The character of land claimed as coal must be determined by actual production from mining on the tract or by satisfactory evidence that coal exists in sufficient quantity to make it more valuable for mining than agriculture. 5-126; 12-612

17. The character of land alleged to be valuable for coal must be established as a present fact, and from the actual production of coal, but it does not follow that there must be an actual development of coal on each 40-acre subdivision. 19-168

18. Not necessary to show that coal has been developed on all parts of a 40-acre tract; if coal has been discovered thereon, the applicant is entitled to the whole of such legal subdivision. 23-116

19. Under an entry made by an association, the land must appear to be mineral in character as a present fact and from actual production of coal, but the development of coal on each 40-acre subdivision is not requisite. 23-127

20. An entry can not be allowed in the absence of evidence showing the existence of merchantable coal within the boundaries of the tract in question. 20-220

21. In determining the character of land alleged to be valuable for coal, the extent of the deposit may be shown by the testimony of geological experts and practical miners, taken in connection with the actual production of coal. 14-113

22. In determining whether a tract contains coal deposits the well known rules of evidence are as applicable as in any other case, and whatever is relevant to and bears in any degree upon the question is admissible in evidence. 34-194

23. In such cases the characteristics peculiar to coal deposits are to be kept in view, and the presence of such deposits may be determined upon authenticated evidence of conditions which constitute the sufficient guide of the geologist or coal expert. 34-194

24. Proximity to a city does not affect claim. 5-126

25. In determining whether land is subject to entry as, the means of transportation can not be taken into consideration as affecting the value of the coal shown to exist. 15-321

26. There is no authority for segregating the coal from other land within a legal subdivision. 3-65

27. Settlement of an alien on, affords no claim thereto under the acts of 1864 and 1865 as against the withdrawal of such land for the Northern Pacific. 14-484

28. The Northern Pacific is not authorized to select coal lands in lieu of lands relinquished under section 3 of the act of March 2, 1899. 31-29

29. An adverse claimant who protests against the allowance of final proof should not be required to introduce testimony if the proof as submitted is clearly insufficient under the regulations. 22-538

30. If an application to purchase under section 2347, R. S., is presented and accepted at a time when the land is not subject thereto, but, upon elimination of the obstacle, is prosecuted openly and regularly to completion, without objection or adverse application by another in the interval or within a time reasonably sufficient for the prosecution of such proceedings, were the earlier application not suspended or impeded by any rule or action of the Land Department which would be equally applicable to a later application, the first should be sustained. If, however, a later applicant seasonably after the restoration presents his application and seeks to perfect it, the first and premature application should not enjoy an unfair ad-

vantage because of priority, but the other should be preferred. 38-528

II. Entry.

31. Only one allowed to same person or association. 6-371; 8-140

32. Must be made in good faith and not for the benefit of another. 10-160

33. Made for the benefit of another is illegal and must be canceled. 7-422; 21-300

34. Procured in the name of qualified person, but for the benefit of an association, invalid. 6-371

35. Entryman must show under oath that entry is made in good faith in his own interest and not in the interest, directly or indirectly, in whole or in part, of any other person or persons. 35-236

36. In those States in which no right or title in the wife's property vests in the husband by virtue of the marital relation, she may, if otherwise duly qualified, purchase coal land in her own and exclusive interest; but the Land Department will require specific proof that she does not really purchase in the interest of her husband. 35-235

37. Must be entered by legal subdivisions. 3-65

38. If it is shown that a legal subdivision entered as, is not in fact of such character, the entry should be canceled as to such tract. 15-588

39. Entry attacked by subsequent homestead claimant may be canceled as to the legal subdivisions in conflict that are not valuable for coal. 15-361

40. Entry under section 2347, R. S., must be restricted to contiguous tracts. 7-172

41. Entry not allowed for noncontiguous tracts. 12-419

42. Entry embracing noncontiguous tracts, made in good faith, under existing practice, may be patented as made, or amended to include contiguous tracts. 7-577

43. Proof of citizenship sufficient if made in conformity with regulations prescribed for carrying into effect the law providing for the sale of such lands. 6-620

44. A prior possessory right, set up to defeat a private entry of coal land, must rest upon actual and *bona fide* occupation. 9-15

45. An applicant for the right to make entry is not disqualified by his having been previously the owner and intermediate assignor of a preference right to enter other coal lands. 18-414

46. The right of a claimant to make entry is not affected by his sale of an option to purchase an assignment of such right where the option expires with no advantage taken thereof. 19-615

47. A private entry may not be allowed to embrace one tract taken in the capacity of an assignee and another under the individual right of the purchaser. 17-22

48. An entry embracing land not included in the declaratory statement, but necessary to the working of the mine and not in excess of the legal acreage, may be allowed to stand where good faith on the part of the entryman is manifest. 17-268

49. Where one files and assigns to a company, the company may enter as assignee. 2-728

50. Entry voidable for illegality may be passed to patent for the benefit of a transferee in view of the price paid for the land and the fact that repayment can not be allowed. 8-140

51. Where patent has been issued, through mistake of the entryman, for land not intended to be entered, the mistake may be corrected for the benefit of a transferee in good faith of the land actually improved and developed as a mining claim, and intended to be entered. 28-307

52. On application for reissue of patent, after amendment of entry to describe the land actually improved and developed, an intervening entry by one having full knowledge of the prior adverse occupation and possession of the applicant, is no bar to the favorable consideration of the application for amendment. 28-307

53. Cash entry of, may be amended after patent, when the mistake was caused by indistinct marks at section corners. 8-303

54. An entry made by an association under the proviso to section 2348, R. S.,

may embrace by legal subdivisions 640 acres, including the legal subdivisions on which the mining improvements are actually situated, whether the land covered by said improvements is coal or agricultural land. 23-127

III. Declaratory Statement; Preference Right.

55. A declaratory statement can not be filed for unsurveyed land. 20-556

56. The prohibition in the statute that but one entry shall be made by the same person does not relate to the declaratory filing, as is the case in the preemption laws. 7-181

57. A second declaratory statement can not be filed in the absence of a valid reason for failure to perfect title under the first. 10-539; 11-32, 351; 15-310

58. Second filing for same tract not allowed to one who has failed to make proof and payment within the statutory period. 10-508

59. Second declaratory statement authorized as of the date made, though filed without authority therefor. 7-181

60. Declaratory statements may be filed on sections 16 and 36, with opportunity to the State (Colorado) to be heard. 7-490

61. Declaratory statement should not be received while the land is covered by the existing homestead entry of another. 11-515

62. A declaratory statement offered during the pendency of a previous application to file, made for the benefit of the same party, though in the name of another, confers no right as against an intervening adverse claim. 11-32

63. Entry based on a second filing may be permitted to stand, where the first filing was abandoned on account of the worthless character of the claim. 29-328

64. An entry allowed on defective declaratory statement and irregular proof may be equitably confirmed, in the absence of any adverse claim, where a proper declaratory statement is subsequently filed and the requisite additional proof furnished. 19-18

65. Declaratory statement is void if prior thereto no coal has been discovered on the land. 14-633

66. The right of purchase is not initiated by filing a declaratory statement, but by actual discovery of coal on the land, and the performance of some act of improvement sufficient to give notice of an intent to purchase under the coal-land laws. 29-615

67. Each member of an association must show qualification. 5-224

68. The law requires that no member of a company shall be interested in other land claimed or owned under the coal law at date of the entry. 2-729

69. An application by an agent of an association to file a declaratory statement must be made in the manner provided by the departmental regulations, and show what improvements have been made, and the qualifications of the persons composing the association. 17-411

70. An application to purchase can not be allowed if made in the interest of another who has exhausted his right. 14-633

71. Final proof will not be accepted on a declaratory statement filed in the interest of another. 15-310

72. No vested rights are secured through filing a declaratory statement; and a sale of the land thereafter by the claimant, prior to final proof and entry, defeats his right to purchase said land, and an entry thereof made in his name must be canceled. 17-351

73. A possessory claim must be maintained and asserted in good faith, and for the use and benefit of the claimant only, to entitle him to be heard in his own right as against the application of another. 20-422

74. The possession of a claim by an agent is the possession of his principal, and all acts of said agent toward perfecting title will inure to the benefit of the principal. 26-107

75. Where a claimant prior to survey locates a claim for himself, and an adjacent claim for another, as agent, and it transpires after survey that the improvements made on behalf of the latter claim are within the lines of the former, such improvements inure to the benefit of said claim, so far as third parties are concerned, and the claimant is not required to

open and improve a mine on the land he claimed before survey. 22-11

76. On the relinquishment of a declaratory statement the improvements made thereunder inure to the benefit of a valid adverse claim then asserted for the tract involved. 22-539

77. In determining the "continued good faith" of the applicant his degree and condition in life may be considered. 13-414

78. The purchaser of the improvements made by a prior claimant under a coal declaratory statement acquires no priority of right thereby, if an assignment of the right to purchase from the Government has not been made as provided in paragraph 37 of the regulations of July 31, 1882. 22-538

79. One who purchases the possessory right to a developed vein of coal while the title to the land is still in the United States, and thereafter remains in actual possession thereof, is entitled to file a declaratory statement and perfect title thereunder. 22-306

80. A filing appropriates the land and bars subsequent applications. 2-728

81. Failure to file declaratory statement within 60 days after date of actual possession, and make payment within one year from the expiration of the time for filing, renders the land subject to the entry of another who has complied with the law. 10-160

82. The time within which a claim must be perfected by purchase, where the filing when first offered is properly rejected on account of a defective township plat, and is thereafter allowed on correction of said plat, should be computed from the date the corrected plat is filed and the land opened to disposal. 26-107

83. A claimant who on the last day of the life of his filing appears at the local office, within the business hours designated by official regulations, and is prevented from submitting final proof and making payment by the receiver's office being closed contrary to said regulations, should not be regarded as in default, where proof and payment are tendered on the next business day. 24-46

84. Final proof and payment must be offered within one year after the expira-

tion of the time allowed for filing a declaratory statement therefor. 20-422

85. Failure to make proof and payment within the statutory period does not forfeit the right of purchase, in the absence of an adverse right. 10-508

86. Failure to perfect entry within the statutory period defeats the right of purchase, in the presence of an intervening adverse claim. 19-522

87. On the failure of a coal claimant to perfect title within the statutory period, the work done by him inures to the benefit of a valid adverse claim then asserted for the land involved. 23-243

88. On failure to make proof and payment within the statutory period the filing should be canceled if, after due notice, the claimant does not comply with the law. 10-508

89. Prior possession, without filing, will not avail as against an adverse claimant who has complied with the law. 4-96

90. Priority of possession and improvement, followed by filing and development of the mine, entitle the claimant to the preference right of purchase. 11-515

91. As between two claimants, both claiming the land on account of the coal therein, priority of application and good faith in improvements should govern the award. 21-197, 493

92. Cleaning out old coal prospects, at an expense of \$10, does not constitute the opening and improving of a mine within the meaning of section 2348, Revised Statutes; and no such right is thereby acquired as will except the land from withdrawal by the Government. 36-360

93. The mere penetration of a bed of coal by means of a drill so small that the work can not be utilized in the mining of coal, is not in itself the opening and improving of a mine within contemplation of the statute, and a preference right of entry is not thereby acquired. 37-723

94. The preference right under section 2348, Revised Statutes, requires actual possession at date of application and improvement sufficient to indicate good faith. 11-32

95. The preference right is dependent upon the opening and improving of a coal mine on public land that is in the actual possession of the applicant. 23-110

96. A preference right arises where any person or persons, severally qualified to enter, have opened and improved any coal mine or mines upon the public lands, and are in actual possession of the same; and accrues only to the person or persons who have so opened and improved such mine or mines, and have the possession thereof.

34-178

97. A preference right under section 2348 is not created, or initiated, by filing a declaratory statement under section 2349. The office of the declaratory statement is to preserve the right, not to create it. If the right does not exist, the declaratory statement has no office to perform and is without force or effect for any purpose.

34-178

98. It is not in all cases essential to the validity of an application, or to the completion of proceedings thereunder, that the applicant show that he had actually opened and improved a mine on the lands. This is necessary only where the applicant asserts a preference right and must maintain his assertion or suffer defeat in favor of another applicant or claimant.

34-178

99. Sections 2348 and 2349, Revised Statutes, do not require that a coal claimant must have opened a mine on the land at the time of filing a declaratory statement.

22-539

100. Where an association of four persons has expended not less than \$5,000 in working and improving a mine or mines of coal on the public lands such association, in the absence of any prior or superior claim, may enter not exceeding 640 acres, including such improvements, even though no declaratory statement may have been filed for the lands.

34-447

101. It is not essential to the validity of an application by an association of four persons to purchase 600 (or 640) acres that the applicants shall have opened and improved a mine on each tract. It is sufficient, where there are no conflicting claimants, that the applicants show that they are severally qualified to purchase, that the lands are subject to sale under the coal-land laws, and that as an association the applicants have expended not less than \$5,000 in working and improving a mine or mines on the lands.

34-267

102. A preference right arises when a mine upon the public lands is opened and

improved by a qualified person in actual possession; and from the time such mine is opened and improvements are commenced, possession concurring, the 60 days within which the preference right may be exercised, or prolonged by filing a declaratory statement, begins to run. (See 36-319.)

36-126

103. Unless the declaratory statement is filed within 60 days, in accordance with the statute, in which respect its provisions are mandatory, the preference right lapses and leaves nothing to be secured by a declaratory statement thereafter filed, notwithstanding no rights in others have intervened. (See 36-319.)

36-126

104. In the absence of an intercepting purchase by or preference right in another, or the withdrawal of the land from entry, after the lapse of the delinquent claimant's preference right, he may yet purchase, unless disqualified on some other ground, as any other qualified applicant might do. (See 36-319.)

36-126

105. The law contemplates a total period of substantially 14 months during which a claimant, in the actual possession of a tract, who has opened and improved a mine thereon, has a preferred right to purchase, for the first 60 days, absolutely, for the remaining one-year period, conditioned upon the filing of a declaratory statement.

36-319

106. Notwithstanding a preference right, claimant's failure to file his declaratory statement in time, in the absence of an intervening adverse right in, or disposition of, the land, the subsequent presentation of the declaratory statement, within the ensuing year, will thereupon afford him the same security, but not beyond the period he would have enjoyed had he filed it in time.

36-319

106a. The office of the declaratory statement is not to create, but to preserve, a preference right theretofore acquired by opening and improving a mine; and if the right does not exist, the declaratory statement has no office to perform and is without force or effect for any purpose.

37-723

107. The object and purpose of a declaratory statement under section 2349, R. S., are to give notice of, and to preserve for the period specified in section 2350, a

preference right of entry already acquired under section 2348; and such preference right is not created or initiated by the filing of a declaratory statement.

34-448

108. If the privilege of postponing entry in the manner provided by sections 2349 and 2350, after a preference right shall have been acquired under section 2348, be not desired by claimant, the filing of a declaratory statement before application or entry is not necessary; and in such case, even if claimant should fail to make application to enter and to pay for the lands within the 60 days allowed for filing a declaratory statement, neither the failure in this respect nor failure to file a declaratory statement would operate to forfeit the right to purchase and enter the lands except in favor of some other qualified applicant.

34-448

109. The declaratory statement and affidavit must be made by the applicant himself; subsequently certain proofs and acts may be made by an agent; where the declaration was improperly made by an agent, in the absence of adverse filing or conflict it may be made *nunc pro tunc*.

2-735

110. The affidavit at the time of purchase must be made by the claimant himself.

21-302

111. The affidavit prescribed by paragraph 32 of the coal-land regulations must be made by the claimant himself.

34-49

IV. Withdrawals; Classification; Price.

See VI HEREOF.

112. Circular of January 21, 1907, relative to the protection of rights existing at date of withdrawal.

35-395

113. Circular of December 27, 1907, concerning lands classified as coal.

36-215

114. Instructions of March 21, 1908, relative to notice of claim to coal lands withdrawn pending classification.

36-318

115. Instructions of August 10, 1910, revoking circular of March 21, 1908, providing for notice of claim to withdrawn coal lands.

39-157

116. Regulations of April 10, 1909, governing classification and valuation.

37-653

117. Paragraph 2 of regulations of April 10, 1909, amended.

38-452

118. Instructions of June 12, 1909, amending regulations of April 10, 1909, governing classification and valuation of coal lands.

39-36

119. Instructions of August 8, 1910, respecting effect of withdrawal of coal lands for classification.

39-156

120. Instructions of May 8, 1909, with respect to nonmineral applications for lands withdrawn or classified as coal.

37-681

121. Withdrawals pursuant to the act of June 17, 1902, under the "second form," do not affect coal lands.

36-138

122. Instructions of October 16, 1909, requiring selection lists embracing lands withdrawn or classified as coal to be submitted to Director of Geological Survey for report.

38-271

123. Instructions of January 7, 1910, relating to classification and valuation.

38-373

124. Instructions of September 7, 1909, governing nonmineral applications for lands classified as coal.

38-181

125. Where withdrawn coal lands are, after classification and appraisal, restored by Executive order to coal filing and entry, no application, filing, or entry will be received therefor until notice of the order of restoration, with the accompanying classification and appraisals, is received at the local office.

40-415

126. No complete equitable interest or title vests in a State by the approval of a segregation list under the Carey Act; and if subsequent to such approval and prior to final approval of the patent list lands in the segregation list are classified as coal, the department is without authority, so long as such classification stands, to approve or patent such lands to the State, except in accordance with the act of March 3, 1909.

38-508

127. The provision in section 2347, R. S., that coal lands should be sold at "not less than" \$10 per acre for lands situated more than 15 miles from a completed railroad, and \$20 per acre for lands situated within 15 miles of such road, fixes a minimum price at which such lands may be sold, but leaves the Interior Department to prescribe, by regulations authorized by sec-

tion 2351, a higher price for any such lands, if in its judgment the conditions would seem to warrant it. 40-610

128. Status at date of proof and payment, with respect to distance from a completed railroad, determines price.

1-540; 2-730; 10-422; 13-397

129. Price dependent upon distance from a completed railroad at date of entry, and not at date of application. 24-11

130. Price determined by distance from a completed railroad, irrespective of distance from nearest shipping point on road.

29-637

131. Price within 15 miles of a completed railroad not affected by the fact that there is an inaccessible range of mountains between the lands and the railroad.

2-733

132. Where the public surveys were erroneously extended over part of the Ute Reservation (west of the one hundred and seventh meridian), and persons went upon the land and filed prior or subsequently to its suspension from sale on October 7, 1880, they were trespassers until the act of July 28, 1882, legalized their occupancy; the completion of a railroad meanwhile within 15 miles of the land enhanced its value.

2-733

133. An entry allowed in accordance with existing regulations that did not require affirmative proof as to the location of the land with respect to completed railroads should not be canceled for the want of such proof.

18-382

V. Alaska.

134. Instructions of June 27, 1900, under act of June 6, 1900.

30-368

135. Circular of July 18, 1904.

33-114

136. General circular of April 12, 1907.

35-673

137. Circular of May 16, 1907.

35-572

138. Instructions of June 27, 1908, amending instructions of March 3, 1908.

36-548

139. Circular of July 11, 1908.

37-20

140. The benefits of the act of May 28, 1908, authorizing the consolidation of claims or locations of coal lands in Alaska, can be shared only by persons who made such locations in good faith—that is, honestly and lawfully—prior to November 16, 1906, in their own interests individually,

without fraud, collusion, or deceit, or any purpose to violate any provision of the law.

38-86

141. If certain agreements or arrangements named, for transferring entries to a company or corporation, were entered into by locators of coal lands in Alaska after they had made their locations in good faith and in their own interest alone, such locations may, under the provisions of the act of May 28, 1908, lawfully pass to entry and patent in accordance with the terms of said act; but if these agreements or arrangements were entered into prior to such locations being made, the locations do not come within the provisions of the act and can not be lawfully passed to entry and patent.

38-86

142. The payment required by section 2, act of April 28, 1904, to be made by locators of Alaska coal lands, as a condition precedent to patent therefor, need not be made, in cases where protest is filed, until after the termination of the protest.

39-322

143. The time covered by any form of proceeding, including a field service report or protest, pursuant to instructions either of April 24 or May 16, 1907, during which period final entry can not properly be allowed, should not be charged against an Alaska coal-land applicant as part of the six months' period prescribed by the instructions of June 27, 1908, for submission of proof and payment.

39-327

144. Paragraph 13 of Alaska coal-land regulations approved April 12, 1907, amended to require the surveyor in making surveys of coal claims to show the location, character, extent, and value of the work performed and improvements made upon the ground.

40-277

VI. Acts of March 3, 1909, and June 22 and 25, 1910.

145. Circular of March 25, 1909, under act of March 3, 1909, respecting surface rights of entrymen.

37-528

146. Circular of September 7, 1909, relative to protection of surface rights of entrymen.

38-183

147. Form 4-357, relative to election to take patent to surface rights, amended.

38-576

148. Instructions of September 8, 1910, under act of June 22, 1910, relating to agricultural entries. 39-179

149. Paragraph 2 of instructions of September 8, 1910, amended by eliminating last sentence thereof. 39-462, 473

150. Instructions of March 6, 1911, under acts of March 3, 1909, and June 22 and 25, 1910, relating to surface rights, withdrawals, etc. 39-544

151. The term "person" in the act of March 3, 1909, includes a State; and where lands in a State selection are subsequently classified as coal, the State is entitled to the right of election provided by that act. 38-245

152. The fact that at the date of the act of March 3, 1909, the land embraced in a homestead entry had been, in a contest proceeding then pending, adjudicated by one of the tribunals of the Land Department to embrace land chiefly valuable for coal, will not deprive the entryman of the right to a patent under that act, if otherwise within its terms. 38-536

153. No complete equitable interest or title vests in a State by approval of a segregation list under the Carey Act; and if subsequent to such approval and prior to final approval of the patent list lands in the segregation list are classified as coal, the department is without authority, so long as such classification stands, to approve or patent such lands to the State, except in accordance with the act of March 3, 1909. 38-508

154. The act of March 3, 1909, provides a means whereby nonmineral claimants for lands withdrawn for coal classification, whose claims were initiated in good faith before the lands were classified, claimed, or reported as valuable for coal, may, notwithstanding the withdrawal, proceed to carry their claims to completion, by electing to take limited patent under said act. 40-418

155. In determining whether an applicant is entitled to the benefits of the act of March 3, 1909, providing for protection of surface rights of nonmineral entrymen, it is competent for the Land Department to inquire into his good faith and whether there has been a compliance with the law under which the nonmineral entry was made; and where it appears applicant has

not acted in good faith the Land Department is without authority to issue surface patent for the land under that act.

156. A withdrawal of lands for coal classification constitutes a claim or report of coal value within the meaning of the act of March 3, 1909. 40-461

157. The act of June 25, 1910, authorizing temporary withdrawals of public lands for certain purposes, does not repeal or render ineffective the act of June 22, 1910, providing for agricultural entries of coal lands, or the act of March 3, 1909, providing for protection of the rights and the issuance of restricted surface patents to entrymen of lands subsequently classified, claimed, or reported as valuable for coal. 39-561

158. A withdrawal for coal classification under the act of June 25, 1910, does not defeat a pending application to locate a soldiers' additional right or bar applicant's right under the act of March 3, 1909, to take a surface patent for the land. 39-561

159. A soldiers' additional application presented prior to the act of June 22, 1910, for land theretofore withdrawn by departmental order from filing or entry under the coal-land laws, is within the proviso to the first section of the act of June 22, 1910, and applicant is entitled to carry the application to completion and receive the restricted patent provided for by that act, notwithstanding a subsequent Executive withdrawal of the land for coal classification under the act of June 25, 1910. 39-603

160. A withdrawal of lands for coal classification, subject to the acts of June 22 and 25, 1910, does not defeat a pending application to locate a soldiers' additional right, presented prior to June 22, 1910, or bar a right under the act of March 3, 1909, to take a limited patent for the land, where the application was filed in good faith prior to any classification, claim, or report that the land is valuable coal land. 40-461

161. The provision in section 1, act of June 22, 1910, that lands withdrawn or classified as coal shall be subject to entry under the homestead laws by actual settlers only, the desert land law, to selection

under the Carey Act, and to withdrawal under the reclamation act, with reservation to the United States of the coal therein, does not include soldiers' additional rights, and soldiers' additional entry of lands withdrawn or classified as coal can not be allowed under that act.

40-408

162. In case of the substitution of a soldiers' additional right in lieu of a similar right held invalid, the application under the substitute right does not relate back to the date of the original application, but runs only from the date of the substitution; and where at such date the land was embraced in a coal-land withdrawal under the act of June 25, 1910, the applicant has no rights entitled to protection under the proviso to section 1 of the act of June 22, 1910.

40-408

163. No specific regulations relative to nonmineral applications for lands later withdrawn or classified as oil having been adopted by the department, the procedure governing applications for lands subsequently classified or withdrawn as coal, adopted prior to the passage of the acts of March 3, 1909, and June 22, 1910, permitting the issuance of surface patents, should be followed in such cases, so far as applicable, and in case of a protest by a mineral claimant against such nonmineral application, charging the mineral character of the land, the proceedings thereon should be in accordance with the Rules of Practice now in effect relative to contests.

39-491

164. A statement by the surveyor that "a good quality of lignite coal is found in several places in the northern part of the township," but making no reference to any specific tracts, can not be regarded as a classification, as coal land, of any particular tract lying in the northern portion of the township, so as to affect the validity of a homestead entry therefor; and upon subsequent withdrawal of the land for coal classification, subject to the provisions of the act of June 22, 1910, the entryman is entitled, upon the submission of satisfactory proof, if he so elects, to receive a restricted patent under the act of March 3, 1909.

39-337

165. The act of June 22, 1910, opened the surface of lands withdrawn or classi-

fied as coal lands or valuable for coal to entry under the homestead and desert land laws, to selection under the Carey Act, and to withdrawal under the reclamation act; and the proviso to section 1 of said act provides a means whereby persons who prior thereto had in good faith initiated nonmineral entries, selections, or locations upon lands withdrawn or classified as coal may perfect the same under the laws under which they were made, by electing to take a patent for the land excluding the coal deposits.

40-418

166. The fact that land embraced in an application to make forest lieu selection under the acts of June 4, 1897, and March 3, 1905, has been classified as coal is no bar to the right of the applicant to complete his application under the provisions of the act of June 22, 1910, by taking the limited patent provided by said act, or the right to a hearing with a view to disproving such classification and establishing his right to an unrestricted patent.

40-276

167. The act of June 25, 1910, in so far as it authorizes withdrawal of public lands for classification as to coal deposits, must be construed as *in pari materia* with the act of March 3, 1909, providing for the issuance of restricted patents to agricultural entrymen of lands subsequently classified, claimed, or reported as valuable for coal, and with the act of June 22, 1910, providing for agricultural entries of coal lands; and so construed, a nonmineral application initiated in good faith prior to the passage of the act of June 22, 1910, is not avoided by a subsequent withdrawal made under the act of June 25, 1910, but the entryman must take a restricted patent.

40-33

168. The fact that lands selected by the State of Utah under section 8 of the act of July 16, 1894, were adjudicated by the Commissioner of the General Land Office to be noncoal lands, as the result of a hearing upon a report by a special agent charging that such lands contained coal, does not entitle the State to an unrestricted patent therefor where the lands were subsequently withdrawn and classified as coal; but the State is entitled to perfect the selection and take title to the land only with reservation to the United States

of the coal therein, as provided by the act of June 22, 1910. 40-340

169. Rights under a homestead entry of lands withdrawn and classified as coal, based upon an application received at the local office prior to but suspended until after the act of June 22, 1910, because not accompanied by evidence of applicant's naturalization, relate back to the date the application was received, where applicant was at that date a naturalized citizen or had declared his intention to become a citizen, and except the entry from the operation of that act; but patent upon the entry must be in accordance with the provisions of the act of March 3, 1909. 40-25

170. Rights under a homestead entry allowed subsequent to the act of June 22, 1910, for lands withdrawn under the act of June 25, 1910, based upon an application filed at the local office prior to the act of June 22, but suspended for proof of citizenship, relate back to the filing of the application, where the applicant was at that date a naturalized citizen or had declared his intention to become a citizen, and except the entry from the operation of that act; and where the entryman settled upon the land prior to said act his entry is for that reason also not subject to the restrictions thereof, but is properly judicable under the provisions of the act of March 3, 1909. 40-26

171. Where subsequent to an Executive order of withdrawal of coal lands, subject to the provisions of the act of June 22, 1910, but prior to notice of such withdrawal at the local office, homestead entry is allowed for lands covered by the withdrawal, the entryman will be required to amend his entry so as to make it subject to the provisions of said act. 40-440

172. Where land embraced in a subsisting coal withdrawal was selected under the act of March 4, 1907, in lieu of land within the grant to the Mobile & Girard Railroad lost to a homestead settler, and was subsequently classified as coal, the selection can be permitted to stand only upon election by the selector to accept surface patent therefor under the act of June 22, 1910. 40-593

173. Where land selected under the act of March 4, 1907, in lieu of land within

the grant to the Mobile & Girard Railroad lost to a homestead settler, is withdrawn for appraisal as coal land prior to submission of the necessary proof to support such selection and is subsequently classified as coal, the selection can be permitted to stand only upon election by the selector to accept surface patent for the land under the act of March 3, 1909. 40-591

174. Indians to whom allotments have been made of lands withdrawn as coal within the additions to the Navajo Indian Reservation in New Mexico, created by Executive orders of November 9, 1907, and January 28, 1908, and whose allotments are known to embrace lands valuable for coal, are entitled to surface patents therefor under the act of June 22, 1910. 39-76

175. As the act of June 22, 1910, makes no provision for the initiation, after its passage, of any agricultural claims to lands withdrawn as coal, except under the homestead and desert-land laws and the reclamation and Carey acts, lands formerly within the Ute Indian Reservation and withdrawn subject to the provisions of that act and the act of June 25, 1910, are not, so long as such reservation remains unrevoked, subject to appropriation by Ute preemption declaratory statement. 39-614

176. The purpose of the proviso to section 2 of the act of June 25, 1910, was to protect *bona fide* occupants or claimants of oil or gas bearing lands, who were in diligent prosecution of work leading to the discovery of oil or gas, against any withdrawal of the land as oil, and has no bearing whatever upon the question of the measure of proof necessary to sustain a protest, charging that the lands are mineral in character, against a nonmineral selection filed prior to the withdrawal. 40-321

177. A protest against a nonmineral selection, charging that the lands are mineral in character, on which a hearing was held prior to any withdrawal or classification of the land as oil, should be disposed of on the proof submitted at such hearing, and a subsequent withdrawal or classification of the lands as oil may not properly be considered in passing upon that protest. 40-321

COLORADO.

See PRIVATE CLAIM, VII; SCHOOL LAND, II, d, 18-19, 46, 93; STATES AND TERRITORIES, 86, 88.

COMMISSIONER OF THE GENERAL LAND OFFICE.

See LAND DEPARTMENT, III.

COMMUTATION.

See FINAL PROOF, X, and 492; HOMESTEAD, XI; INDIAN LANDS, 213, 234-235, 246, 251-253, 332, 370-371, 420, 459, 493; OKLAHOMA LANDS, 4, 11-12, 19, 97-98, 102-103, 112, 123-141, 194-196, 221-224; RESIDENCE, III; TIMBER CULTURE, 206-217.

CONFIRMATION.

See ENTRY, 226, 260; EQUITABLE ADJUDICATION; GRADUATION ENTRY, 1-2; INDIAN LANDS, 319-322, 496-497; PRIVATE CLAIM; RAILROAD GRANT, XIV; RAILROAD LAND, 111, 154-188, 283-285, 361-376.

I. Under Section 7, Act of March 3, 1891, Generally.

II. Under the Proviso.

III. Section 23, Act of March 3, 1891.

IV. Act of March 9, 1904.

I. Generally.

1. Instructions of May 8, 1891, to chiefs of divisions in the General Land Office, with respect to said section. 12-450

2. *Ex parte* cases falling within said section may be, by motion, advanced on the docket. (Rule of Apr. 8, 1891.) 12-308

3. Rule of the General Land Office for examining cases under said section on motion. 13-416

4. The rule of April 8, 1891, for the disposition of cases is not applicable to cases ready for disposal in their regular order. 16-336

5. An entry will not be taken up under the rule of April 8, 1891, unless sufficient facts are stated to bring the case within the operation of said section. 13-111

6. The rule of April 8, 1891, has reference only to cases then pending before the department. 15-595

7. The rule of April 8, 1891, does not contemplate the advancement of cases in which the matter of confirmation has been considered below. 15-362

8. A case involving the reinstatement of an entry can not be advanced for consideration on motion for confirmation. 16-358

9. The confirmatory provisions of said section were not intended to disturb vested interests acquired prior to the act. 20-488

10. A claim of, will not be considered where the entry is found regular and legal in all respects. 20-346

11. Refusal of the commissioner, on motion, to confirm an entry is not a final decision from which appeal may be taken. 13-462

12. An entry falling within the confirmatory provisions is confirmed as an entirety, to the exclusion of all other claims to any portion of the land. 19-441

13. The General Land Office has no jurisdiction over an entry confirmed by section 7, except to pass the same to patent. 16-46

14. The confirmatory provisions for the benefit of transferees are not limited to cases of incumbrances of record. 23-481

15. The record should disclose the actual consideration paid by a purchaser who invokes the confirmatory operation of said section. 15-50

16. A deed purporting to convey the title of one holding a power of attorney from another in whose name a soldiers' additional entry has been made by such attorney is not proof of a sale that brings the entry within the confirmatory provisions of section 7; nor will a deed executed subsequently by the principal and based on an additional consideration cure the defects in the former conveyance so as to bring the entry within the terms of the section. 17-483

17. An entry canceled by a decision that became final before the passage of the act is not within the confirmatory provisions of section 7. 12-446, 610;

13-33, 388, 452; 16-47, 358

18. An entry canceled prior to the act is not confirmed, nor does the pendency of proceedings under permission to show cause why such entry should be reinstated bring it within the confirmatory operation of said section. 16-430; 19-435

19. Confirmatory operation of the section not defeated by an order of cancellation made subsequent to the act. 15-568

20. Does not provide for the reinstatement and confirmation of canceled entries. 13-452, 574; 15-421

21. The expiration of the statutory life of an entry does not exclude it from the confirmatory operation of said statute. 13-6

22. Confirmatory effect of said section not invoked where the pending contest is dismissed on the merits. 12-497; 15-445

23. An entry against which there is no adverse claim pending at date of, is confirmed, where the land, after entry and prior to March 1, 1888, is sold to a *bona fide* purchaser. 12-250, 279, 600; 13-181

24. A preemption entry is not confirmed where at the date of final certificate the homestead entry of another for the same land exists of record. 15-503

25. An adverse claim originating prior to final entry defeats confirmation under the body of said section. 14-431; 15-162

26. The occupancy of land by townsite settlers at the time of soldiers' additional entry is an "adverse claim" that defeats confirmation under the body of the section. 14-367

27. A mortgagee is not entitled to invoke the confirmatory provisions of said section where at the date of the incumbency the records disclose that the entryman had disposed of the land prior to final proof and payment. 20-403

28. A mortgagee is not entitled to protection if the mortgage is executed prior to the submission of final proof and issuance of certificate thereon. 17-524

29. The confirmation of an entry for the benefit of a transferee is not contemplated in case of a transfer prior to the issuance of final certificate. 23-333

30. To bring a transferee within the confirmatory provisions satisfactory proof of sale or incumbency and good faith between the parties must be furnished. 12-305, 540, 571; 13-429

31. The allowance of a filing for land within a canceled entry will not defeat confirmation for the benefit of a transferee where said entry is reinstated and intact upon the record at the date of the act. 15-111

32. Fraud on the part of the entryman will not defeat confirmation where the entry is allowed in the absence of an adverse claim, and the land transferred prior to March 1, 1888, to a purchaser in good faith for a valuable consideration. 12-444

33. A claim of prior Indian occupancy set up to defeat confirmation can not be entertained where the entry was allowed in accordance with existing regulations and the claim is not asserted for a term of years. 16-78

34. Confirmation of an entry is not defeated by a claim based on the alleged prior occupancy of a nonreservation Indian, where at the date of entry there was no authority for such occupancy. 17-317

35. Execution of mortgage and contract to sell the standing timber, prior to final proof, do not defeat confirmation of an entry made in good faith. 16-156

36. Confirmation is not defeated by want of good faith on the part of the entryman and his immediate transferee where subsequently, and prior to March 1, 1888, the land is sold to a *bona fide* purchaser. 13-537, 581; 16-156; 18-44

37. For the benefit of a transferee is not defeated by want of good faith on the part of the entryman or his immediate transferee if subsequently, and prior to March 1, 1888, the land is sold to a *bona fide* purchaser; nor is such purchaser bound to take notice of a prior order of cancellation that is void for want of jurisdiction. 22-174

38. The department is without jurisdiction to try a contest that is initiated after a transfer of the land in case of an entry confirmed under said section. 17-48

39. The body of said section contemplates the relief of the incumbents and purchasers named therein, and the illegality of the entry or the pendency of a contest does not defeat confirmation thereunder. 12-571;

13-292, 537; 14-349; 18-44, 324

40. Pendency of application to contest at the passage of said act does not defeat confirmation for the benefit of a transferee. 16-78

41. The confirmatory provisions for the benefit of a transferee are not dependent upon the entryman's compliance with law. 13-108, 152; 15-507

42. An entry made by one not shown to be qualified in the matter of citizenship is confirmed if prior to March 1, 1888, the land is sold to a *bona fide* purchaser, and there was no adverse claim at date of entry. 12-637; 16-157

43. The provisions for the benefit of a "*bona fide* purchaser for a valuable consideration" extend to a transfer from husband to wife in good faith where local laws recognize such transfer. 15-50

44. A transferee does not occupy the status of a "*bona fide* purchaser" if he is aware prior to purchase of the entryman's noncompliance with law. 13-419

45. A trust company holding a mortgage deed, executed to secure the payment of bonds, may properly, for protection of the bondholders, invoke the confirmatory provisions of said section. 13-581

46. A purchaser of land covered by a Sioux half-breed location, made under power of attorney, in effect an assignment of the scrip, is charged with notice that said scrip is not assignable, and is not a *bona fide* purchaser. 18-562

47. A mortgagee can not be considered a *bona fide* purchaser where at the date of mortgage the entry is held for cancellation on the report of a special agent. 15-278

48. A transferee is not entitled to the benefit of said section where at the time of his purchase the records of the local office showed that the entry in question was held for cancellation. 19-435

49. The fact that proceedings had been instituted by the Government against an entry at the date of its incumbrance does not defeat confirmation thereof for the benefit of a transferee. 23-481

50. Does not confirm an entry fraudulent in inception and transferred and mortgaged prior to March 1, 1888, where at the date of said mortgage the entry is under attack on the charge of having been

made in the interests of the transferee, and the charge is duly established. 13-556

51. An incumbrancer or transferee, whose right is acquired after cancellation of the final certificate, can not invoke the provisions of, as a *bona fide* purchaser, as he is charged with record notice of the cancellation. 14-85; 16-140

52. An entry fraudulent in inception and transferred prior to March 1, 1888, is not confirmed where at the date of transfer the entry is under attack, as shown by the records of the local office. 17-277

53. For the benefit of one who in good faith buys the land prior to March 1, 1888, not affected by the fact that the final deed correctly describing the land was not executed until after said date. 16-518

54. A mortgagee is not entitled to the benefit of, through a prior incumbrancer, where no privity exists between said parties. 15-278

55. Can not be invoked by the entryman, nor any one claiming under him, where the incumbrance, by reason of which confirmation is sought, has been released. 15-348

56. Not confirmed for the benefit of a transferee, if fraud on his part is found through investigation by the Government. 12-440

57. In determining the right of a transferee, the transfer is protected by the presumption of good faith up to the point where sufficient evidence is furnished to overcome it. 14-651

58. A transferee who, prior to purchase, examines the premises can not be considered a *bona fide* purchaser where examination would disclose that the entryman had not complied with the law. 16-358

59. A transferee who employs another to procure title does not occupy the status of a *bona fide* purchaser if the agent secures such title through an entry made in the interest of the transferee, even though the transferee had no knowledge of the fraud. 17-28

60. Where the record calls for inquiry as to the good faith of a transfer, in determining whether an entry is confirmed, the Government is not precluded therefrom by its own proceedings prior to said

act, in which the status of the transferee was not involved. 18-93

61. Where a case is returned to the General Land Office for adjudication under said section, and appeal is taken from the commissioner's action therein, the department will not order a hearing on an issue involved in its former consideration of the case. 18-299

62. A charge of fraud, and that the transferee had knowledge thereof, should be investigated before determining whether the entry is confirmed. 16-338

63. An entry allowed in conflict with a railroad grant, but relieved therefrom by forfeiture of the grant, may be confirmed, notwithstanding the previous adverse claims of the company. 12-540

64. An entry is confirmed where, at the date of said act, the land is held by a transferee entitled to confirmation and is subsequently purchased by another in good faith. 14-573

65. An entry erroneously canceled on the report of a special agent without notice is confirmed for the benefit of a transferee as against a claim for confirmation set up by a transferee under an intervening entry, allowed while the order canceling the first entry was in force. 18-311

66. Where an entry has been canceled without notice to the entryman or his transferee, and the land entered by another prior to the act, and the transferee invokes the confirmatory provisions of section 7, the claim of the intervening entryman is subject only to the right of the transferee to show that the entry was improperly canceled. (See 22-174.) 20-311

67. Cancellation of an entry without notice to the entryman is absolutely void, and an entry so canceled at the passage of the act is in law an existing entry, and confirmed by said section, if otherwise within its provisions; and the right of a transferee in such case is not limited to the privilege of showing that the entryman had in fact complied with the law. 22-174; 23-162

68. An entry erroneously canceled prior to said act without opportunity of defense given to the entryman, or the *bona fide* incumbrancers, must be regarded, so far as the incumbrancers are concerned, as an

existing entry, and within the provisions of said section. 20-553

69. An order of cancellation without notice to a record transferee is irregular, but not void; and an entry thus canceled prior to the act is not confirmed by section 7, as said section is only applicable to entries subsisting at the passage of the act. 23-175

70. A mortgage given before final payment on an Osage entry does not bring the entry within said section. 15-348, 450

71. The receipt issued to an Osage claimant on his first payment is a "final receipt" that entitles a subsequent purchaser to the benefit of said section, if otherwise within its terms. 18-441; 20-411

72. A cash entry under section 2, act of June 15, 1880, is not susceptible of confirmation where transferred prior to final entry. 13-545

73. Transferee of homesteader who makes cash entry under act of June 15, 1880, in the presence of a contest, is not a *bona fide* purchaser where he has full knowledge of the asserted adverse claim of the contestant. 16-183

74. Does not cover a cash entry under section 2, act of June 15, 1880, made by one who has theretofore relinquished his interest in the original entry. 22-81

75. A soldiers' additional, transferred to a *bona fide* purchaser prior to March 1, 1888, is confirmed, even though the alleged military service of the entryman is not verified by the records of the War Department. 15-186

76. The purchaser of a soldiers' additional right is entitled to the benefit of the confirmatory provisions of said section. 22-651

77. A soldiers' additional homestead on which final certificate has not issued, is not confirmed. (See 24-58.) 15-136

78. Of a soldiers' additional homestead entry, is not defeated by the failure of the register to issue the formal final certificate, where the record shows the soldier complied with all the requirements of law and regulations. 24-58

79. The certificate of the register and receipt of the receiver issued on the allowance of a soldiers' additional entry

bring such entry within the confirmatory provisions of said section. 22-690

80. A purchaser of land sold under a power of attorney that amounts to an absolute sale of a soldiers' additional right, prior to the exercise thereof, is not a *bona fide* purchaser under said section. 16-484; 17-512

81. A soldiers' additional homestead based upon service in the Missouri Home Guard may be confirmed in the interest of the transferee. 14-457, 522, 649

82. The confirmatory provisions extend to a soldiers' additional entry made on a certificate of right based upon alleged service in the Missouri Home Guard, though the records of the War Department fail to show such service. 17-305

83. A soldiers' additional entry based on an invalid certificate of right is confirmed, if otherwise within said section. 17-168

84. The body of the section is not applicable where the mortgage is not made till March 1, 1888, nor the proviso where the entry is held for cancellation within two years from allowance. 13-524

85. Confirmatory provisions for the benefit of *bona fide* purchasers extend to a preemption entry based on a second filing. 16-536

86. Provisions for the benefit of incumbancers extend to a homestead entry made by one who had previously secured title to another tract under the homestead law. 16-540

87. A desert land entry of double minimum land allowed at single minimum is confirmed, if otherwise within the terms of the statute. (See 16-407.) 17-115

88. The confirmatory provisions extend to an entry made by a minor, if otherwise within the terms of said section. 17-523

89. The sale of an undivided interest in the land covered by an entry does not bring it within said section. 14-1; 16-28; 21-12

90. A *bona fide* purchaser who subsequently sells a portion of the land and then joins in a release to the United States of all title held under the entry, except as to one tract, may properly invoke the confirmatory provisions as to said tract. 17-377

91. An entry may be confirmed as to a specific tract embraced within the pur-

chase of a transferee, though the entry as an entirety is not within the confirmatory operation of said act. 19-496

92. A mortgage covering a legal subdivision, except one acre, is such an incumbrance of the entire subdivision as to bring the entry thereof within said section. 21-303

93. An entry may be confirmed under the body of said section as to a specific subdivision held by a transferee, and under the proviso as to the remainder of the land, if no action adverse to the entry has been taken within the period fixed by the statute. 20-411

94. Is applicable to an entry of Osage land made under the act of May 28, 1880. 12-442; 13-58

95. An entry of Otoe and Missouri land may be properly regarded as a preemption entry within the intent of said section. 13-78

96. A purchaser under section 3, act of September 29, 1890, is entitled to the confirmatory provisions of the act as a pre-emptor. 22-131

97. The provisions of said section are applicable to an entry of Mille Lac lands made under the general laws prior to July 4, 1884. 22-500

98. Transferee is entitled to confirmation of soldiers' additional though the original entry may have been canceled. 14-648

99. As between a purchaser from the entryman and one holding under a subsequent tax sale, the benefit of the confirmatory provisions must be accorded to the holder of the tax title. 24-139

100. Irregularity in entry does not require equitable action if said entry falls within the confirmatory provisions of the section. 13-37

101. In applying the confirmatory provisions an intervening entry should not be canceled without due notice to the entryman, with opportunity to be heard. 17-20

102. The act of March 3, 1893, conferring the right of purchase upon transferees holding under invalid certificates of additional right, does not restrict the confirmatory operation of section 7, but provides for a class of cases not confirmed thereby. 17-168

II. Under the Proviso.

103. The statutory period of two years designated in the proviso contemplates calendar years without regard to the number of days they may contain. 25-157

104. The proviso does not relieve entries from the effect of contests pending at the passage of the act. 12-522

105. The actual date of the receiver's receipt fixes the commencement of the period within which action must be taken to defeat confirmation. 15-228

106. A pending protest defeats confirmation. 12-440

107. An entry is confirmed where two years have elapsed since final receipt issued and no contest or protest is pending at the passage of the act. 12-313, 334, 344; 15-145

108. To defeat confirmation it is necessary that action be taken within two years from the issuance of the receiver's receipt. 29-539

109. An entry of Alabama land, reported valuable for coal prior to the act of March 3, 1883, and not thereafter offered at public sale, is within the proviso, if there was no action against the validity of the entry within two years from the issuance of the receiver's receipt. (See 39-93.) 28-90

110. Homestead entry of Alabama land returned as valuable for coal confirmed under the proviso. 29-539

111. The proviso does not preclude proceedings subsequent to the expiration of two years with a view to investigating and determining the known character of the land at the date of final entry, and canceling the entry should the evidence show that the land was at that time known to be chiefly valuable for coal. 37-590

112. The action of the land department withdrawing lands on account of their supposed coal character, with a view to classification thereof, and ordering an investigation of desert-land entries covering the same, within two years from the issuance of final receipt thereon, of which the entryman had due notice, constitutes a protest within the meaning of section 7, and bars the operation of that statute. 40-97

113. A contest pending at the passage of the act defeats confirmation. 12-459

114. The protection extended to pending contests and protests is limited to entries falling within the terms of the proviso, and does not include entries specified in the body of the section. 13-292

115. The word "proceedings," in the instructions of May 8, and July 1, 1891, means any action, order, or judgment had or made in the General Land Office which, if not complied with, calls for cancellation of the entry. 13-1

116. A requirement, prior to the lapse of two years, that an entrywoman shall furnish additional proof as to her qualification, is such a "proceeding" as will defeat confirmation. 21-345

117. After the lapse of more than two years from issuance of final certificate for a desert-land entry upon proof made in full compliance with regulations then in force, confirmation becomes effective, in the absence of a pending adverse proceeding, and the land department is thereafter without jurisdiction to initiate any proceeding against said entry, by calling for additional proof or otherwise, except for causes which would prevent confirmation irrespective of the lapse of time. 35-576

118. Proceedings by the Government, begun within two years, defeats confirmation. 13-1, 332

119. Any proceeding by the Government challenging the validity of any particular entry, or any investigation initiated because of the supposed invalidity of such entry, before the lapse of two years, is effective to bar confirmation. 33-306

119a. The filing of a protest, bringing to the notice of the Government the invalidity or illegality of an entry, within two years from date of final receipt, will defeat confirmation, whether the land department actually orders an investigation of the matters charged in the protest within the two-year period or not. 34-172

120. Any proceeding initiated by the land department before the expiration of two years, calculated to test the validity of an entry and the claimant's right to patent, is sufficient to bar confirmation. 37-329

121. The proviso has no reference to proceedings by the United States, or its offi-

cers or agents, in respect to entries of the classes therein specified, and in this connection does not affect the conduct or action of the land department in taking up and disposing of final proof of entrymen after the lapse of the two years mentioned in the act. 40-300

122. Adverse decision of the General Land Office, on proceedings by the Government, will not defeat confirmation if not begun within two years after issuance of final receipt and the entry is otherwise within the terms of the proviso. 12-610

123. A judgment of cancellation rendered on a special agent's report within two years from final entry defeats confirmation. 13-419

124. Confirmation is not defeated by an order directing the investigation of an entry, and the favorable report of the special agent thereon, within two years from date of final certificate. 13-553

125. Suspension of an entry after the lapse of two years does not operate to except it from confirmation. 13-39

126. An entry reinstated for the purpose of examining into its *bona fide* character, and so remaining for two years, is not confirmed. 17-512

127. Where it does not affirmatively appear that an entryman has received notice of a requirement of the General Land Office, made prior to the passage of the act, the proceedings thus taken will not be held to defeat confirmation. (See 27-522.) 21-12

128. A proceeding instituted by the General Land Office many years prior to the act, but of which the entryman was never notified, held to have been abandoned and no bar to confirmation. 29-423, 525

129. The commencement of proceedings within two years defeats confirmation, whether notice of such action is given within said period or thereafter. 27-522

130. A proceeding by the Government to determine the validity of an entry is commenced when the investigation is ordered, and if so commenced before the lapse of two years, it will defeat confirmation, whether notice of such action is given within that period or not. 33-498

131. An order of the General Land Office made prior to the expiration of two years, requiring the entry to approximate

160 acres, defeats confirmation, though notice thereof was not given until after the expiration of two years. 17-362

132. An order of the General Land Office, made within two years, requiring a locator of scrip to show his right of possession thereto, defeats confirmation. 13-94

133. An adverse report upon an entry, by a special agent, filed within two years, is a "protest against the validity of such entry," and the land department is warranted in making an investigation of such entry before passing it to patent. 31-368

134. An adverse report by a special agent filed within two years is a "pending protest," and defeats confirmation. 33-280

135. A direction to a special agent to investigate a particular entry, followed by an investigation and request by him that the entry be suspended to await his report, all within two years, bars confirmation. 37-379

136. A direction to a special agent to investigate an entry, within two years from final certificate, followed by an investigation and report by a different special agent after the expiration of the two-year period, is sufficient to prevent the bar created by the proviso, provided the investigation and report are in furtherance of the direction given within the period of limitation and part of the same proceeding. 37-167

137. Whether a letter and telegram from a special agent of the General Land Office to the Commissioner, asking that patents be withheld for lands embraced in certain entries pending a further investigation and report on the ground of suspected fraud, followed by an order suspending action on all such entries until further order, constitute a "pending contest or protest" against the validity of the entries, within the meaning of the act, is a question within the jurisdiction of the Secretary to determine, on an application by such entryman for a patent after the expiration of two years; and on the Secretary's refusal to issue a patent to one of such entrymen mandamus will not lie to compel its issuance. 40-278

138. An application to contest which has not been allowed, and which can not

be allowed under the rulings of the department, is not a "protest" nor "contest" that defeats confirmation.

13-458, 553

139. The pendency of an application to contest will not defeat confirmation where such application must be rejected on account of prior proceedings by the Government, though said proceedings were begun too late to prevent confirmation. 17-125

140. A pending valid application to contest defeats confirmation. 15-114

141. Where a pending contest fails, and more than two years have elapsed, the entry is confirmed. 13-489, 527

142. If a contest against a homestead entry fails, and more than two years have elapsed, it is confirmed under the proviso, though under the body of section 7 the entry is not susceptible of confirmation. 26-239

143. An entry is not confirmed under the proviso where a right to the tract under a congressional grant is asserted at the date of said entry and remains unadjudicated without laches on the part of the grantee. 20-259

144. An informal charge of fraud, by one who alleges no interest and serves no notice on the entryman, is not such a "protest" as will defeat confirmation. 13-553

145. A soldiers' additional entry upon which the final commissions have not been paid and the final receipt has not issued is not within the confirmatory provisions of section 7. 30-547

146. The cancellation of a soldiers' additional entry prior to the passage of the act of March 3, 1891, does not defeat confirmation of a cash entry based on said additional entry and made under the act of 1880, in accordance with existing regulations. 13-118, 386

147. A soldiers' additional entry, suspended after the lapse of over two years for investigation of the original entry, and released from suspension prior to the passage of the act of March 3, 1891, is confirmed by the proviso, and is not subject to contest. (See 39-93.) 19-573

148. A soldiers' additional entry regularly made under a certificate of right and power of attorney, exhausts the additional right of the soldier, and a subsequent ex-

ercise of such right is not confirmed by the proviso. 18-129

149. A cash entry under section 2, act of June 15, 1880, by a transferee holding under a soldiers' additional entry is confirmed by the proviso to said section where the validity of said cash entry is not questioned within two years from the issuance of final receipt and no protest or contest is pending. 13-118

150. A soldiers' additional entry allowed on a certificate of right issued on account of service in the Missouri Home Guards is confirmed by the proviso if otherwise within the terms of said section. (See 39-93.) 17-170

151. The proviso extends only to the classes of entries specifically mentioned therein, which require acts of the entryman to be performed on the ground and does not embrace soldiers' additional entries. 39-93

152. A homestead entry allowed under a defective notice of intention to submit final proof may be confirmed under the proviso if otherwise subject to such disposition. 13-6

153. An entry that is a nullity under the law as it existed prior to the act of March 3, 1891, is not susceptible of confirmation. 13-484, 533

154. The proviso was not intended to operate as a conveyance springing up at the expiration of two years from the date of the final certificate, nor as confirming an invalid entry; but merely to limit the time within which proceedings may be instituted looking to cancellation of final entries. 37-181

155. Where an entry is allowed without authority of law, as for unsurveyed land, the mere lapse of two years after final certificate does not cure the invalidity. 37-181

156. Land not included in the approved plat of survey of surrounding lands, as returned and filed, is not surveyed; and a timber and stone entry allowed for such land is a nullity and not subject to confirmation. 36-268

157. A contest against a preemption entry, as to part of the land covered thereby, on the ground of a settlement right, and failure on the part of the pre-emptor to comply with law, is barred un-

der the proviso if, after the lapse of two years, there is pending no contest or protest involving the land in question. 25-14

158. Preemption entry made by one who had previously filed a declaratory statement for another tract is confirmed by the proviso if otherwise within terms of said section. 16-465

159. Preemption entry of Alabama iron land, based on settlement and filing made prior to the act of March 3, 1883, by one who removed from land of his own in the same State to make such settlement, is confirmed by the proviso if otherwise within the terms of said act. 16-544

160. The proviso covers a preemption entry allowed in violation of 2260, R. S. 13-392; 16-467; 18-164

161. A preemption entry made by one who enters upon and uses the land for purposes of business only, and in fraud of the possessory right of an Indian tribe, is not confirmed. 16-209

162. A preemption entry including double-minimum land erroneously allowed at single-minimum price is not confirmed. (See 17-115.) 16-407; 19-279

163. An entry allowed where the husband and wife claimed separate residence in a house built across the line between two settlement claims is confirmed if two years elapse and no protest or contest has been filed. (Overruled, 13-1.) 12-443

*164. The fact that an Osage entryman had previously made a preemption filing does not defeat confirmation. 20-411

165. In determining whether an entry of Osage land falls within the proviso the lapse of time must be computed from the date of the last payment and final certificate. (Overruled, 18-441.) 13-529

166. An entry that may be confirmed either under the body of said section or the proviso should be adjudicated under the latter. 13-55, 58; 14-120; 18-164

167. The proviso is not applicable in a case where there has been a transfer and the entry can not be confirmed on account of fraud on the part of the transferee. 13-641

168. Timber and stone entries are within the intent and operation of the confirmatory provisions of the act. (Overruled, 37-181.) 33-10

169. Timber and stone entries do not come within the purview of the proviso, and action upon such entries is in no wise affected thereby. 37-181, 564

170. The general departmental order of November 18, 1902, suspending action in all timber and stone entries in the States of California, Oregon, and Washington, pending investigation, is not a contest or protest within the meaning of section 7, and does not bar confirmation. 33-10

171. A general order suspending all entries of a specified class within a given territory will not bar confirmation, but there must be a direct charge against each particular entry, or they must be specifically listed for investigation within the two-year period, in order to stop the running of the statute. (Overruled, 37-618.) 37-90

171a. The order of March 26, 1903, directing the investigation of all entries within the former Siletz Indian Reservation, on the ground of supposed fraud in connection therewith, together with the subsequent actions by the Land Department with respect to such entries taken within the two-year period, are sufficient to bar the operation of the proviso. 37-618

172. No such vested right is acquired by an application under the timber and stone act, prior to proof and payment, as will prevent withdrawal under the act of June 17, 1902, and an entry erroneously allowed upon proof and payment made subsequently to such withdrawal confers no rights and is not susceptible of confirmation. 36-18

173. Where an application to contest is not presented until after two years, the Commissioner of the General Land Office has no authority to allow it, as the seventh section operates as a bar to any proceeding not commenced within that time, and a proceeding instituted by the Government within that time does not suspend the running of the statute so as to subject the entry to attack by reason of an adverse right not asserted within the period of limitation. 35-68

174. While an individual has no right to institute a new and independent proceeding after the lapse of two years, the Land Department may accept the offer of an individual to aid in the prosecution of a pro-

ceeding commenced by the Government prior to the expiration of that period, or adopt such agency and allow the individual to furnish the witnesses and prosecute the case. 35-68

175. Proceedings commenced by the Government within two years do not suspend the running of the statute so as to subject the entry to new and independent proceedings not initiated within that period. 36-438

176. The Government may avail itself of the services of an individual in the prosecution of proceedings commenced by it within the statutory period, but no right is acquired or conferred by reason of such assistance except such as accrues to the public generally by the restoration of public lands to entry. (See 37-663) 36-438

177. After the expiration of the two-year period a stranger will not be allowed to intervene and take part as plaintiff in the prosecution of a proceeding commenced by the Government within that period. 37-663

178. While the Government may prosecute investigations under proceedings begun within two years after final receipt at any time until the suspension on account thereof has been formally removed, it may not, after two years, require the entryman to furnish additional evidence of his compliance with law, unless such requirement be in furtherance of like action taken prior to the expiration of that period. 38-34

179. Where final certificate is issued upon a homestead entry, subject to the claim of the Northern Pacific Railway Co. under its grant, which claim is subsequently relinquished under the act of July 1, 1898, the adverse claim of the company, while pending, is not a contest or protest, within the meaning of the proviso, such as would prevent confirmation. 35-48

180. Where no contest, protest, or proceeding was initiated against an entry within two years, and the entryman's qualification is affirmatively shown by the record and the entry appears to be in all respects regular, the Land Department is bound to issue patent, notwithstanding a

subsequent charge that the entryman was disqualified. 36-528

III. Section 23, Act of March 3, 1891.

181. Second entry of Osage land is confirmed by section 23, if allowed in the absence of adverse claims, and due compliance with law is shown. 13-299, 700

IV. Act of March 9, 1904.

182. The act, confirming certain classes of filings, entries and final proofs, defective because executed outside of the land district, applies only to filings and entries in existence at the date of the act. 33-285

CONTEST.

See AFFIDAVIT; APPLICATION, IX; CONTESTANT; EVIDENCE; JURISDICTION; PRACTICE.

- I. Generally.
- II. For What.
- III. Charge.
- IV. Initiation of.
- V. Death of Party.
- VI. Interest of the Government.
- VII. Second.
- VIII. Speculative.
- IX. Desert Land.
- X. Homestead.
- XI. Preemption.
- XII. Swamp Land.
- XIII. Timber Culture.
- XIV. Coal Land.
- XV. Timber Land.

I. Generally.

1. Docket of, to be kept in the local office (circular of December 18, 1885.) 6-12

2. Should be noted on tract book. 5-597

3. Circular of August 4, 1910, relative to notation on records of local office. 39-150

4. What constitutes, and how distinguished from proceedings on protest. 2-581; 3-399; 6-765; 19-442, 467

5. A case arising on a claim of priority of settlement as against a scrip location,

wherein each party pays his own costs, is not a "contest" within the meaning of the act of May 14, 1880, by which a preferred right can be secured. 19-547

6. Where entry has been allowed upon a showing of proper qualifications on the part of the applicant, any attack upon the entry on the ground of the entryman's disqualification should be by contest and not by protest. 40-613

7. The act of May 14, 1880, does not give an absolute right to contest an entry, nor take from or qualify the power and authority conferred by the organic act upon the Land Department to supervise and direct all proceedings relating to disposal of the public lands, and to determine whether a contest shall or shall not be allowed. 35-67

8. The right to initiate a contest against an entry, given by the act of May 14, 1880, should not be arbitrarily denied. 39-340

9. Whether a, should be allowed against a final entry rests in the discretion of the commissioner, subject to appeal if a hearing is denied. 15-352

10. The allowance of an application to contest a final entry is a matter resting in the discretion of the commissioner, and denial thereof will not be disturbed unless abuse of discretion appears. 22-159

11. Local officers have no authority to order a hearing involving an entry on which final certificate has issued. 10-694; 12-305; 13-429; 16-152

12. No rights secured under a hearing ordered by the local office without authority. 10-694

13. The receiver, acting alone, has no authority to dismiss. 23-548

14. Initiation of, a waiver of pending appeal. 5-350

15. Withdrawal of, by attorney conclusive. 4-267

16. Dismissed on order of contestant's attorney without authority or consent of contestant should be reinstated. 14-373

17. Should be reinstated where dismissed in absence of contestant and said absence was through fault of defendant. 7-60

18. Will not be reinstated on the ground that notice of decision was not received, where the failure to receive notice is due to contestant's negligence. 14-319

19. The contestant may dismiss the contest at the local office while it is pending on appeal (by the contestee). 2-298

20. A motion for withdrawal, at or before day of hearing, is an interlocutory proceeding, and will be decided on the day of the hearing; if the contestant does not appear, he will be regarded as in default. 2-218

21. The withdrawal of, leaves the issue between the entryman and the Government. 10-133; 12-334; 18-233

22. Withdrawal of, will not prevent the Government from taking advantage of the evidence submitted. 5-40, 385; 7-394; 11-166; 12-495; 13-121, 437

23. A contestant who, on the day of hearing, files a dismissal, together with a new affidavit of, with a view to proceedings thereon, may be permitted, prior to further action in the premises, to withdraw the dismissal and submit evidence under the original charge. 22-26

24. An amicable agreement settling the controversy may be properly recognized. 2-257; 5-119

25. The terms of a stipulation entered into between parties to a contest should not be enforced to the exclusion of the real question at issue therein where it is apparent that said stipulation with respect to such matter is without consideration and made apparently through inadvertence. 17-519

26. On alleged priority of settlement being withdrawn on a disclaimer of interest on the part of the adverse entryman, and his application to amend his entry so as to embrace different land, should be reinstated, with all rights incident thereto, on the withdrawal of the entryman's application for amendment. 23-341

26. Rights of adverse entrymen, dependent upon priority of settlement, may be adjudicated in the absence of a formal contest as between them on evidence submitted by them in defense of their rights against a third party. 23-400

27. On the cancellation of an entry and the subsequent homestead entry of the same tract by another the latter is not required to establish residence pending the disposition of an appeal from the order of cancellation taken before the home-

steadier was bound to establish his residence. (Overruled, 14-429.) 6-688

28. Entryman must comply with the law during the pendency of. 1-404; 5-104; 9-24; 10-618; 11-256; 13-271

29. During the pendency of a, in which each party alleges priority of settlement, both are bound to comply with the law; and if the successful party fails so to do, such failure is properly the subject of inquiry on behalf of the losing party. 28-480

30. If an entryman fails to maintain residence, during the pendency of a, involving priority of settlement, his laches can not be cured by the resumption of residence prior to the institution of proceedings by the adverse settler charging said default. 29-54, 203, 704

31. Where a successful contestant, in a suit involving priority of settlement, makes entry, and is granted a leave of absence, a stranger to the record is not entitled to be heard on an allegation that involves the entryman's residence during the pendency of the contest. 29-222

32. Pendency of, does not excuse compliance with law where one is irregularly allowed to enter land thus involved. 14-429

33. A timber-culture entryman who makes entry of a tract involved in a pending controversy can not thereafter be heard to plead the pendency of said contest as an excuse for noncompliance with law. 18-504

34. During the pendency of a, the entryman is not excused from compliance with the law; and upon the death of the entryman the law casts upon his heirs the burden of showing due compliance with the terms of the statute (timber-culture). 25-65

35. Hearing ordered as to status of land does not involve the applicant's qualifications to enter. 3-253

36. In the absence from the record of contest papers, a contest may not be assumed, to detriment of one complying with the law. 2-57

37. May be properly dismissed when continued by stipulation to a day certain, and the contestant fails to appear. 13-390

38. Is discontinued by agreement of counsel to indefinite postponement of hearing. 10-459

39. A defendant who elects to plead a statutory defense and submits no evidence is not entitled to a further hearing in the event his defense is held not good. 16-348

40. Not defeated by previous extrajudicial opinion expressed by Commissioner on partial and *ex parte* statement of contestee. 9-182

41. Must be prosecuted with all reasonable diligence, and where such rule is not observed the Government may properly regard the contest as abandoned and proceed accordingly. 18-366

42. Should be dismissed where contestant fails to appear, either in person or by counsel, on day fixed for hearing. 3-565; 7-252

43. Should be dismissed if not diligently prosecuted to trial and judgment. 25-8

44. Should not be dismissed, on motion of stranger to the record, prior to the day of hearing and without notice. 2-217, 220; 4-255

45. Should not be dismissed without notice, and prior to the day set for hearing. 4-488; 6-268

46. In which an intervener has been recognized should not be disposed of prior to the day fixed for hearing and without notice to said intervener. 13-24

47. Dismissal of, by the local office, and failure to appeal, effects a final disposition of the case. 13-196

48. May be properly dismissed where contestant states under oath that he was mistaken in the matters alleged against the entry. 13-693

49. May be properly dismissed where the contestant declines to pay the cost of taking the testimony on the part of the contestee, and waives the preferred right of entry, and it is apparent that such waiver is not in good faith. 22-296

50. Contest will not be dismissed on motion of stranger to the record alleging initiation for speculative purposes, and he has no right of appeal nor ground for a writ of certiorari. 2-68

51. Should not be dismissed if *prima facie* case is made out. 5-3; 6-682

52. The failure of a party to proceed with a hearing in accordance with de-

partmental directions does not estop him from asserting his priority of right as against the intervening adverse claim of a third party. 17-519

53. It is within the supervisory authority of the secretary to order a hearing between one holding under an entry secured as the result of a contest and an intervenor alleging residence and improvement prior to said contest and that the entry in question was improperly allowed as the result of the prior proceedings. 28-339

54. Where several are filed they should not be consolidated or heard at the same time, but where such action is taken and the several contestants submit testimony that calls for cancellation of the entry the case may be disposed of on the record so made. 19-501

55. The relinquishment of part of an entry relieves the tract relinquished from reservation, and a subsequent contest against the entire entry gives the contestant no right in said tract, though his right to proceed against the remainder of the entry is not affected by the relinquishment. 22-128

56. A successful, against an entry from which one of the tracts is eliminated as noncontiguous on an intervening order from the General Land Office, confers no right as to the tract so released. 21-451

57. Irregular action of the local office in ordering a hearing does not defeat the right of a settler to show the facts with respect to his settlement claim. 20-317

58. A contestee who appears specially for the purpose of filing a motion to dismiss on the ground that the affidavit does not state facts sufficient to warrant cancellation of the entry, and excepts to the action of the local officers in allowing the contestant to amend the affidavit, does not, by subsequently participating in the hearing, waive or forfeit the benefit of said motion and exception. 33-122

59. Where after conclusion of testimony on behalf of contestant the contest is, on motion, dismissed for want of jurisdiction, without any evidence having been submitted on behalf of the entryman, but is subsequently reinstated without notice to the entryman, no action affecting the entry should be taken in the contest proceeding

without affording the entryman an opportunity to submit testimony in his behalf. 37-603

60. Will not lie against an entry canceled of record prior to initiation of the adverse proceeding. 22-415

61. Apparent error in allowing, may be explained by testimony, but not taken advantage of by stranger to the record. 3-531

62. Failure to serve notice of, and the initiation of new proceedings, is abandonment of the first, and warrants dismissal thereof. 10-268

63. A charge of bad faith against a claimant finds corroboration in his unexplained failure to testify in support of his claim. 9-175

64. A charge of fraud against an entry can not be established by evidence showing the fraudulent acts of a third party in relation thereto, if the connection of the entryman therewith is not proved. 18-467

65. *Ex parte* showing, without notice to the entryman, will not justify cancellation. 9-522

66. Local officers may inspect the land involved after due notice to the parties and during the trial. 6-626; 8-38; 16-95

67. When a decision against a party is final, he becomes a stranger in the case, though with the right to see that judgment is properly executed. 2-595

68. Validity not affected by fact that contestant is an alien. 17-503

69. May be instituted by a citizen regardless of his own right to enter the land. 11-575

70. Will not be entertained where the entryman is of unsound mind and has no curator or guardian through whom his interests may be protected. 29-281

71. Concurring decision of the local officers should be signed by both, but the failure of one to attach his signature will not warrant a reversal of the judgment. 12-642

72. Proceedings at the instance of an attorney who is not entitled, under section 190, R. S., to appear will not be recognized. 11-25

73. The provision in Rule 2 of the Rules of Practice that an applicant to contest must file a statement under oath setting forth the law under which he intends to

acquire title and showing that he is qualified to enter under that law was designed to insure good faith upon the part of would-be contestants and to prevent the filing and prosecution of speculative contest by those not qualified or who do not intend to acquire title to the lands under appropriate public land laws, but it was not contemplated that it should be construed with the same strictness as though required by some specific provision of law governing contests, and will not be held to prevent the acceptance of an application to contest tendered by one qualified in all respects except as to age, where he is so nearly 21 years old that he will in all reasonable probability attain that age prior to termination of the contest.

40-555

74. The statement and showing required of an applicant to contest by Rules 1 and 2 of Practice are designed to insure good faith on the part of would-be contestants and to prevent the filing and prosecution of speculative contests by those not qualified or who do not intend to acquire title to the lands under appropriate public land laws, and will not prevent acceptance of an application to contest, tendered by one in all respects qualified, merely because the lands are within a temporary petroleum withdrawal and it is for that reason uncertain whether contestant can make entry thereof in event of the successful termination of the contest.

40-557

II. For What.

75. Right of, as against any statutory claim to land. 9-332

76. May be entertained against a location of Chippewa scrip. 14-576

77. Against a location of Sioux half-breed scrip, on unsurveyed land, will not be dismissed on the ground that prior to the survey of the land, and adjustment of the location, such a contest is premature, where the evidence shows the invalidity of the location. 21-111

78. Will lie against an entry of Kansas Indian-trust land for noncompliance with law or other sufficient cause. 9-329

79. Will not lie against an Indian allotment that has been finally approved by the department. (See 24-264.) 19-167

80. The action of the Office of Indian Affairs on allotments is conclusive as to whether the Indian was a settler on the land and whether he was entitled to receive an allotment. 24-424

81. On proper charge made, may be entertained against an approved Indian allotment. 24-264

82. Land in a suspended Indian allotment is not subject to a, filed subsequent to the order of suspension. 27-554; 28-196

83. Should not be allowed against an Indian allotment pending departmental inquiry as to the validity of the allotment. 28-519

84. A preferred right of, as against a townsite selection, may be equitably accorded a *bona fide* homestead settler on a tract covered by a townsite declaratory statement. 13-143

85. A pending townsite claim, under which final proof has been submitted that establishes the right of entry, is properly the subject of. 28-530.

86. Against an entry of lands withdrawn for the benefit of a railroad grant confers no right as against the grant. 19-11

87. Purchase of homestead improvements gives no preferred right of contest. 2-62

88. Not allowed to the holder of a relinquishment. 3-150; 5-5; 18-144, 358

89. On the ground of relinquishment and abandonment, begun for speculative purposes by one who holds the relinquishment, and subsequently files the same, confers no right on cancellation. 13-493

90. Not required to call attention to irregularities in final proof, a protest sufficient. 9-495

91. The regularity of an entry can not be called into question except by one who shows that the allowance of such entry is in violation of his prior right or equity. 12-639

92. A hearing will not be ordered on an allegation of irregularity in presenting an application for the right of entry, where it is apparent from the record that the right of the applicant is not dependent upon priority of application. 25-92

93. Proceedings initiated by one claiming a superior right to the land are in the

nature of a contest, and must be governed by the rules provided therefor. 8-493

94. A hearing on protest against final proofs (preemption) does not initiate a contest. 2-581; 3-399

95. May be allowed where the life of the entry has expired without final proof, or the entryman may be called upon to show cause why his entry should not be canceled. 9-287

96. On the ground that the entry was made while the land was in possession of another good under general circular of 1879. 2-67

97. Based on prior settlement, to be effective against the subsequent entry of another, should be brought within the period provided for the assertion of settlement claims. 15-397; 16-266, 270

98. One who seeks to rescind a contract for the withdrawal of a, on the ground of fraud, should establish the charge by irrefragable evidence and tender return of the consideration received. 15-451

99. It is no ground of, that the entryman, for a consideration, agreed to contest a prior entry of the land, and, if successful, to waive the preference right in favor of contestant, and that the entryman thereafter refused to abide by the agreement, but, having secured cancellation of the prior entry, entered the land himself. 18-577

100. One who assists another to procure an entry by furnishing the money for the requisite fees, will not be permitted to attack the good faith of said entry in his own interest. 23-186

101. The failure of an intervening entryman to specify any reason, on due opportunity given, why his entry should not be canceled and the preferred right of a successful contestant recognized warrants cancellation of his entry and precludes him from thereafter attacking the entry of the successful contestant on a charge that should have been set up under the rule to show cause. 23-522

102. A charge of fraud in the procurement of a relinquishment will not be entertained, as against a record entryman, on behalf of a third party who alleges that he is in possession of a prior relinquishment and intended to enter the land in controversy. 22-150

103. An allegation that an entry is made in bad faith and for the purpose of speculation, and not for the purpose of actual settlement and cultivation, warrants investigation. 22-245

104. On a charge against an entry that it was secured through a speculative, the entry must be held intact, where it appears that the entryman's status as a successful contestant did not operate to defeat the claim of any applicant for the land. 29-74

105. The charge that a, was begun under a speculative contract with a third party, if proven, will not affect the subsequent entry of the tract involved, after its restoration to the public domain, by the widow of the contestant in her own right, the contestant having died prior to the conclusion of the suit. 23-256

106. A charge of collusion between a contestant and the entryman presupposes that the entryman is in default as to some requirement of law, and that the collusion is brought to shield him from the consequences of such default, by preventing an honest contest. 29-211

107. General charge of fraud not ground for. 9-545

108. An offer to sell the relinquishment of an entry is not of itself a sufficient ground for contest 38-187

109. By issue raised, after final proof, as to compliance with law. 4-20

110. Preferred right of, awarded to conflicting entryman. 4-304

111. Local office may not direct, as between preemptor and timber-culture claimant. 1-481

112. Will lie for fraud or failure to comply with the law at any time before patent issues. 3-137

113. The enforcement of contracts between claimants for public land is not properly within the scope of a, before the Land Department. 20-13

114. The Land Department has no jurisdiction over disputes between settlers as to the ownership of improvements. 20-3

115. Rights as to the ownership or possession of improvements, placed on public land without authority of law, are not determined by a judgment of the department sustaining the validity of an entry of said land. 28-250

116. It is not within the province of the department to determine the mental capacity of an entryman on a charge that he is an "idiot and incompetent to enter public land," in the absence of proper judicial proceedings. (See 12-690.) 15-399

III. Charge.

See AFFIDAVIT; PRACTICE, III.

117. The Rules of Practice do not require an affidavit of, to be executed before the local officers. 17-540

118. Affidavit of, in the nature of an information and not essential. 6-299; 7-41

119. Affidavit of, may be based upon the information and belief of the contestant. 3-513; 15-114, 301

120. An affidavit of, may be properly rejected if not executed in due form, and the contestant in such case acquires no rights thereunder. 12-545

121. Contest based on verbal information will not be dismissed when no objection was made at the hearing. 3-310; 4-255

122. Affidavit of, is in nature of an information, and when accepted, notice issued, and service made, jurisdiction is acquired. 5-657

123. It is not the affidavit, but due notice to the settler, which vests jurisdiction in the local officers. 2-58, 312; 4-255

124. Any question as to the sufficiency of the information upon which the local officers elected to proceed disappears the moment notice to the settler has been issued. 2-58, 65; 3-208, 248, 278

125. The sufficiency of an information on which the local office has issued notice is not a matter of review in the department, as it is by notice the local office secures jurisdiction, and not by virtue of the information on which the citation issues. 27-654

126. A motion to dismiss for informality in the affidavit, and the want of a corroboratory affidavit, may be properly overruled by the local office, as its jurisdiction is not dependent upon the affidavit but upon the service of notice. 24-383

127. The sufficiency of a charge will not be considered if the question is not raised before the submission of testimony. 1-114; 9-255; 17-4; 18-540

128. The defendant only can object to the sufficiency of the charge. 3-57; 5-639

129. Objection to the sufficiency of the affidavit can only be raised by the defendant, and not by him prior to the day set for the hearing. 13-258

130. After the local officers have accepted an affidavit and issued notice that has been duly served, the contest should not be dismissed on motion of a stranger to the record alleging that said affidavit fails to set forth a cause of action. 28-147

131. Informalities in, may be excepted to only on the day set for hearing, and then only by a party to the record; if not then excepted to they are to be regarded as waived; if a motion to dismiss therefor be made, it should be granted, or an amendment of the affidavit may be allowed. 2-217, 221; 3-374; 4-255; 5-657

132. Sufficiency of affidavit not considered except on objection. 4-425

133. Objection to affidavit is not waived by going to trial after such objection is overruled. 10-181

134. Local officers should carefully examine the contest papers, point out their defects, and allow immediate amendment. 2-260

135. Affidavit should be dated and show continuance of default alleged. 4-84

136. A clerical error in dating an affidavit of, by which the contest is made to appear premature, affords no ground for dismissal. 19-210

137. Should not be dismissed because the affidavit of, is not dated. 11-346

138. The amendment of an affidavit of, relates back to the original, and excludes intervening contests, where the amendment does not introduce new grounds, but merely makes more specific and definite the original charge. 19-309

139. Affidavit of, may be amended on suggestion of the entryman's death and his heirs made parties to the suit; and the right to so amend is not defeated by the pendency of a contest filed by another party at the same time, against the entry in question. 4-538; 10-261; 18-583

140. Affidavit of, if not properly corroborated, may be rejected by the local officers. 4-255; 8-446; 11-325; 16-391; 17-125; 19-453

141. It is within the discretion of local officers to require more than one corroborating affidavit; and where they adopt a rule that two corroborating affidavits must in all cases be furnished, such exercise of discretion will not be interfered with.

38-144

142. An affidavit of, based upon information and belief, and corroborated by statements showing no specific knowledge of the facts, may be properly regarded as not affording a basis for a hearing. 20-13

143. Affidavit of, if made upon facts within the knowledge of contestant, may be corroborated by witnesses who testify on information and belief; but if contestant's allegations rest upon information and belief they should be corroborated by witnesses whose statements are based on personal knowledge of the facts. 16-391

144. The corroboration of an affidavit of, is for the information and protection of the local officers, and after a hearing is ordered the absence of such corroboration is immaterial. 25-380

145. The purpose of the rule requiring an affidavit of, to be corroborated is to assure the Government of the good faith of the contestant, and not that jurisdiction may be vested in the local officers, that being obtained by service of notice only. 27-555

146. A corroboratory affidavit of, based on personal observation is sufficient.

21-211

147. In the matter of the affidavit of, the testimony of one corroborating witness is sufficient. 13-24; 14-696

148. A letter from the receiver of a local office attached to an affidavit of, in support of the charge therein, may be accepted as due corroboration where said charge involves a matter of record within the official knowledge of said officer.

13-333

149. Affidavit of contest signed by contestant's attorney as one of two witnesses is valid. 2-217

150. When irregularly allowed (during suspension of the entry) on uncorroborated affidavit, the uncontradicted testimony thus submitted by the contestant may be afterwards taken as corroborating the affidavit and warrant proceedings

when the entry is relieved from suspension. 17-96

151. An affidavit of, may be properly rejected if not corroborated; and where contestant in such case waives the right of appeal and subsequently furnishes the requisite corroborative affidavit, his right to proceed dates from such time, and should not be recognized in the presence of an intervening contest regularly initiated, and if so recognized, the preferred right must be accorded to the intervening contestant. 19-453

152. After a hearing has been directed by the department on the charge set forth in an affidavit of, the subsequent retraction of the statements in the corroboratory affidavit does not warrant the General Land Office in revoking the order for the hearing issued under departmental direction. 23-285

153. It is within the discretion of the commissioner to deny a hearing on an affidavit of, corroborated by a witness who has been convicted of perjury in making said corroboratory affidavit. 22-159

154. Affidavit of, may be corroborated on information and belief of affiant.

14-588; 15-300

155. The sufficiency of a corroboratory affidavit is a question resting in the discretion of the Land Office, and as a rule the defendant only is entitled to be heard on objection thereto. 15-415

156. Should not be allowed where the corroborating witness swears to the facts set forth as true "to the best of his information and observation." 1-140

157. Where no adverse right in the contestant is alleged as the ground of a contest against an entry or selection, but the contest is based upon some alleged invalidity in the entry or selection, the contestant, or corroborating witnesses, must state facts relative thereto within their own knowledge, and not matters of mere information, rumor, or belief. 32-282

158. After hearing and judgment against contestee on the merits by the local officers it is error to dismiss contest for want of the corroborating affidavit of one or more witnesses. 2-61, 210, 312

159. Affidavit filed as the basis of, does not justify hearing thereon unless it sets

forth clearly charges that will warrant cancellation if proven. 3-378;

4-369; 7-452; 11-325; 17-125, 177

160. The allegations in affidavit of, will not be held insufficient if the charges therein, taken together, set forth a state of facts that warrant cancellation. 18-2

161. To determine the sufficiency of an affidavit of, as the basis for a hearing it is necessary to consider whether or not, if any one or more of the charges taken singly, or all the charges taken together as a whole, are established, the entry must be canceled. 26-151

162. Hearing will not be ordered on an application to contest a military bounty land warrant location, where the applicant alleges nothing that calls for proof of any fact not apparent upon the face of the records of the Land Department, and makes no charge of fraud in the location. 35-61

163. An affidavit of contest against a forest lieu selection, charging that the selected land was occupied at the date of the selection, is not sufficient in the absence of a further charge that the occupancy was adverse to the selector. 40-231

164. Where an affidavit of, contains an allegation as to a condition existing at the date of the contest, which from its nature must also have existed at the date of the entry, the allegation will be regarded in the same light as if the condition had been alleged to exist at the inception of the entry. 19-108

165. A general charge that an entry is not made for the benefit of the entryman will not justify a hearing, if the facts on which such allegation rests are not specifically set forth, and the sources of information disclosed. 25-506

166. Though the charge may be general in character, it will not be held error on the part of the local office to proceed with the hearing where the alleged fault, if found true, calls for cancellation of the entry. 22-89

167. A charge that an entryman has sold the land embraced within his entry must fail if it appears that the alleged sale was the result of coercion or duress. 28-160

168. In matters not specifically charged the issue is solely between the entryman and the Government. 7-408;

10-232; 16-380; 19-172

169. In absence of a specific charge, and proof thereof, the contest must fail, leaving the issue between the entryman and the Government. 17-452

170. An indefinite and general charge that an entry is made for speculative purposes does not warrant an order for a hearing. 18-20

171. The local officers may properly reject an application to contest an entry if in their judgment the charge as laid against the entry does not justify a hearing. 18-465

172. Affidavit of, setting forth "upon information and belief that said homestead entry was not made in good faith, but was made for the purpose of speculation and sale," states a cause of action, and is sufficient to put the defendant on notice of the charge to be met. 21-211

173. The charge in an affidavit of contest against a homestead entry that the entry was illegal in its inception, that it is held for speculative purposes only and with a view to selling a relinquishment thereof and not with intent to make the land a home, is sufficient to warrant the ordering of a hearing. 40-221

174. May be dismissed and the entryman allowed to submit the requisite supplemental proof in support of his entry where the charge as laid is not supported by the evidence and the entryman's good faith is apparent. 11-246

175. Must fail if the charge as laid therein is not established by a preponderance of the evidence. 11-75; 17-129

176. Where the charge as laid fails, the contestant can not insist on a judgment of cancellation for some default not charged; and where rights of third parties are not involved and bad faith is not manifest the Government will not insist upon forfeiture. 13-527

177. Failure of the specific charge leaves the issue as between the entryman and the Government. 9-327

178. The dismissal of, on the failure of the specific charge, does not relieve the entryman from the consequences of his

noncompliance with the requirements of the law. 17-452

179. Not material that affidavit of, was executed before a person that subsequently represented the contestant. 7-42

180. Should not be dismissed on the ground that the information was sworn to before an attorney of record in the case. 13-121

181. Affidavit of, not invalidated by omission of venue. 5-12

182. The insertion by an attorney of the date of entry in a blank form for contest, after the execution, is permissible. 2-260

183. When accepted, the defendant is the only person entitled to complain of irregularity in the application. 8-241

184. After affidavit of, has passed from affiant's control and inspection attorneys should not make additions thereto. 11-293

185. Affidavit of, not invalidated by contestant's attorney adding, at contestant's request, letters and figures that do not modify the charge, but show matters of record which the local office should embody in the notice. 11-293

186. Dates in contest papers should not be changed by an attorney after the execution of such papers and prior to the filing thereof, though such action will not be held to invalidate affidavits so changed. 22-242

187. A supplemental affidavit of, does not constitute an abandonment of the prior charge or waive rights secured under a hearing subsequently had thereon. 11-407; 13-105

188. Amendment of an affidavit of, by adding an additional charge, does not preclude proof of the default originally charged. 11-423

189. In case of a hearing ordered on affidavit of, that is defective, but susceptible of amendment, it is not necessary to remand the case for amendment and further hearing, where, at the hearing held, the contestee did not appear, or make objection to the sufficiency of the affidavit, and no one sought to intervene, and the evidence then submitted establishes the fact that the entryman had failed to comply with the law. 28-380

190. If a defendant desires to test the sufficiency of the affidavit of, without a decision on the merits, he can decline to plead and allow judgment to go as for want of plea, and appeal therefrom, assigning as error the order overruling his demurrer. 13-348

IV. Initiation of.

191. Not initiated until issuance of notice, but the contestant, on filing affidavit of, acquires a right to proceed against the entry that can not be defeated by a subsequent relinquishment. 10-302

192. The right to proceed against an entry dates from the filing of the affidavit of, and such right can not be defeated by a subsequent relinquishment. 18-92

193. Affidavit of, will be held to have been accepted on the date when notice issues where date of filing does not appear. 6-825

194. Not considered as initiated until the affidavit is received and accepted. 6-825

195. Affidavit of contest dates from time received at local office. 6-530

196. The initiation of, so far as the rights of the entryman are concerned, must be considered as of the date of his appearance at the hearing, in the absence of record evidence of notice. 11-400

197. An affidavit of, left with the register, but not made of record nor deposited for such purpose, does not confer upon affiant the status of a contestant, nor any right that he can assert as against one claiming under subsequent relinquishment. 12-113

198. Date when the affidavit of, is received and accepted determines whether the contest is premature. 7-346

199. Though improperly received, may proceed in the absence of prior adverse right. 5-436, 446

200. Applications for the right of, take precedence in the order in which they are actually received at the local office. 13-162, 190

201. When a statutory ground of cancellation is set up and notice issues the suit is regularly initiated so far as a stranger to the record is concerned, and can not be dismissed prior to the day fixed

for hearing and without notice to contestant. 13-124

202. When affidavit of, is presented ready for the administration of the oath thereto by contestant and his corroborating witnesses, it is the duty of one of the local officers, if called upon, to administer said oath, and the failure or refusal to take such action will not defeat the priority of the contestant. 11-218

203. May be rejected if offered outside of the hours set apart for the filing of such papers. 7-504

204. Order of June 13, 1896, with respect to applications filed during vacancy in local office. 22-704

205. To contest an entry confers no right if presented while the local office is closed for the transaction of all business requiring joint action of the officers. 14-506

206. An application for the right of, sent by mail to the local office during a vacancy in the office of the register, and there remaining unacted upon during said vacancy, is properly held subject to a similar application presented by another party on the opening of the office to business. 20-276

207. Affidavit of, received by mail and placed on record before office hours and prior to the opening of the office for business, takes precedence over one filed on the opening of the office. 9-54

208. As between two applications, one received by mail and lying unopened on the register's desk at 9 o'clock in the morning, and one presented in person at such hour, priority should be accorded the latter. 22-242

209. Where two or more applications are received in the same mail, they will not be regarded as simultaneous, but the one first taken up, numbered, and entered on the records, in the regular course of business, is entitled to precedence. 33-582

210. An application received by mail will not be regarded as presented or filed until taken up, numbered, and entered of record, and where a contest application is presented in person and in the ordinary course of business is accepted, numbered, and entered of record, and another is at

that time, unknown to the local officers, in the unopened mail in the office, priority will be accorded the application first accepted and filed. 34-712

211. If a few seconds intervene between two applications precedence should be given the one first actually received. 8-241

212. A changed date (from an earlier to a later), in a stamped filing mark, on an application to contest an entry, may be accepted as establishing the actual priority of such application as against another, bearing a stamped filing mark of the later date, though the latter application bears the lower number. 18-455

213. Application for the right of contest should be granted to the highest bidder where two are presented simultaneously. 14-506

214. An applicant for the right to contest an entry who does not give his proper post-office address will not be heard to complain that he was not notified that the right would be awarded to the highest bidder. 29-25

215. In case of conflicting applications the only person that can object to the award made is the unsuccessful applicant. 10-459

216. Not held as filed where the papers are placed in the hands of a special agent by the contestant. 7-212

217. The local officers must examine carefully all applications for contest and point out their defects. 2-260

218. An application to contest an entry, if rejected, confers no right in the absence of appeal. 11-179

219. Rights under, not defeated by the failure of the local office to act on the application. 11-199; 14-306

220. Failure of the local office to order a hearing on a charge that calls for such action will not defeat the right of the contestant as against the subsequent relinquishment of the entry under attack and the intervening entry of another. 18-108

221. Not initiated by a mere application to enter the land covered by the claim of another. 15-415; 16-44

V. Death of Party.

See *CONTESTANT*, 66-80, 275-277.

222. The death of the entryman after appeal by him from an adverse decision of the local office does not abate proceedings. 6-483

223. Contests are in all cases against the entry, and in the event of the death of the entryman pending the contest, his heirs may be made parties thereto. 33-21

244. Claimant not entitled to dismissal of, on showing contestant's death, as the department may proceed against the entry. 8-598

225. On death of preemptor with contest pending the case will be disposed of as though the original parties were existing. 3-544

226. Against the entry of a deceased homesteader, wherein the decedent is made the sole party defendant, is a nullity, and the rights of the real parties are not affected thereby. 9-308

227. Death of the entryman prior to the day fixed for hearing is not ground of dismissal or suspension of proceedings when the entryman has sold the land and the transferee is in court. 10-624

228. The heirs and legal representatives of a deceased entryman need not be made parties to a proceeding against an entry held by a transferee who is duly served with notice. 11-321

229. Death of the entryman after appeal by the contestant does not deprive the Land Department of jurisdiction. 6-781

230. The death of entryman subsequent to hearing and decision in the local office does not, in the absence of notice thereof to the Land Department, call for any change of parties defendant, or in any way affect the jurisdiction of that department to pass upon the record as made before the local office. 33-71

231. Where claimant dies during pendency of adverse proceedings in the local office the proceedings should be discontinued and decedent's successors in interest notified of their right to be heard. 11-306

232. Where the entryman dies prior to service of notice his heirs and successors

in interest should be made parties and duly served with notice. 11-604

233. On the death of the entryman, pending proceedings, subsequent action on behalf of decedent must be authorized by the heirs or legal representatives. 13-60

234. Against the entry of a deceased homesteader requires notice to the heirs and legal representatives. 6-241; 12-510

235. In proceedings against the entry of a deceased homesteader the heirs of the entryman are entitled to notice. 13-371; 15-27

236. In a contest against the entry of a deceased homesteader it is necessary to serve notice thereof only upon such of his heirs as are citizens of the United States. 40-552

237. In a, against the entry of a deceased homesteader the heirs should be made parties thereto, but if they are not so included in such proceeding, and the commissioner thereafter remands the case with leave to amend, such right of amendment, so allowed, is not defeated by a subsequent intervening contest. 23-55

238. In a, against the heirs of a homesteader, on the ground that they have failed to comply with the law, it is essential that the death of the entryman be alleged and proven. 26-344

239. In a proceeding on the charge that the entryman died leaving no heirs or beneficiaries under section 2291, R. S., the administrator of the entryman's estate is not entitled to notice of the hearing. 22-446

240. On the death of the entryman and substitution of the widow as defendant she is entitled to notice and must be brought into court through process of law or voluntary appearance. 12-14

241. Must be against the heirs or legal representatives of a deceased timber-culture entryman. 3-592; 5-398; 8-452

242. The sole devisee of a deceased timber-culture entryman is entitled to be heard as the party defendant. 8-452

243. Against the entry of a deceased timber-culture entryman, where the decedent is made the sole party defendant, is a nullity and must be dismissed. 10-152; 18-294

244. Death of the timber-culture entryman before initiation of, being shown, the contestant should by amendment and due notice make the heirs parties, and a continuance for such purpose should be allowed. 10-261

245. Against the heirs of a deceased entryman on the ground of noncompliance with law can not be properly maintained by one of said heirs; and no rights are secured through a contest of such character. 18-431

246. Right of amendment, on suggestion of the timber-culture entryman's death, not defeated by an intervening. 10-261

247. In proceedings against the timber-culture entry of a decedent the infant (sole) heir and the guardian should be made parties thereto in accordance with local procedure. 11-252

248. In proceedings against the heirs of a timber-culture entryman all the heirs must be made parties. 17-532

249. As against the heirs of a timber-culture entryman it is necessary to allege and prove the death of the entryman. 27-510

250. Against the claim of a deceased timber-culture entryman must show affirmatively that the proceedings are regular and that the entryman or his legal representatives have failed to comply with the law. 11-252

251. Death of a defendant suspends action against desert entry until his heirs or personal representatives are substituted as defendants and are brought into court by proper notice, or voluntarily appear. 16-146

VI. Interest of the Government.

See VII HEREOF.

252. The Government is a party in interest. 1-77; 2-95;

4-263, 462, 512; 5-372, 395;

6-300; 7-394; 10-19; 14-587

253. Government has the right to appear and cross-examine witnesses, or have the case continued. 8-2

254. While the Government is an interested party, it is not a contestant or a protestant in the sense in which those terms are used in section 7, act of March 3, 1891. 12-334

255. Whether fraud, illegality, or non-compliance with the law constitutes the basis of contest, the Government is a party to the inquiry; if the suit is withdrawn, the papers should be forwarded to the General Land Office for suitable action. 3-120

256. The Government is a party in interest and entitled to a judgment on the facts, however disclosed and whatever the rights of the parties as against each other may be. 9-391; 21-461

257. Questions raised by a, may be considered where the interest of the Government is concerned, even though the contestant can secure no personal benefit from an order of cancellation. 14-194

258. Though fraudulent, the Government may take advantage of facts proven. 6-27

259. Government may take advantage of evidence brought out in a contest, though on a point not charged in the affidavit. 2-95, 97; 7-395

260. The Government may avail itself of, acquiesce in, or adopt the proceedings initiated and the proofs furnished by an individual in contest of an entry. 33-422

261. While the Commissioner of the General Land Office may, in his discretion, avail himself of the aid of a contestant to determine the validity or invalidity of a forest lieu selection, yet his refusal to accept such aid is not the denial of a legal right, and his exercise of discretion in such matter will not be controlled by the department unless abuse thereof is clearly apparent. 40-197

262. It is within the sound discretion of the commissioner to accept or reject an application to contest a forest lieu selection tendered after the initiation and during the pendency of Government proceedings against the selection. 40-219

263. Although there is no statutory right of contest against a forest lieu selection, and no preference right of entry can be secured by the cancellation of the selection as result of a contest, nevertheless, where an affidavit of contest is presented containing every material averment as to the invalidity of the selection, the Government may accept the aid of contestant to determine that question. 40-231

264. Withdrawal of the contestant will not prevent the department from consid-

ering the evidence and passing upon the rights of the entryman as between him and the Government. 5-40, 385;

7-394; 11-166; 12-495; 13-121, 437

265. On the withdrawal of contestant the case is left as between the Government and the entryman. 10-133;

12-334; 18-233

266. Failure of contestant to appeal will not preclude the department from considering the evidence with a view to protecting the interests of the Government. 7-177

267. The fact that contestant may waive a charge made by him does not relieve the department from the duty of ascertaining from the record the facts, bearing on an alleged violation of law, that may directly affect the integrity of the entry. 25-273

268. Failure to establish the specific charge as laid in the affidavit leaves the case as between the entryman and the Government. 9-327

269. In matters not specially charged, the issue is between the Government and the entryman. 7-408;

10-232; 16-380; 19-172

270. Though the Government is indirectly a party, it will not of its own motion cancel an entry where bad faith is not clearly shown. 9-148; 11-166

271. One who files an affidavit of, against an entry and pays or deposits the requisite fees acquires a right under the act of May 14, 1880, that can not be defeated by subsequent proceedings initiated by the Government against such entry. 11-278

272. The Government may, while dismissing the, institute proceedings on its own motion. 5-58

273. Rights of third parties will not be considered in the disposition of a withdrawal of suit filed by the contestant. 3-301

274. Proposal of the contestant to withdraw his suit on condition that another contestant do the same will not limit the action of the department nor abridge the right of the other contestant. 13-693

VII. Second.

275. Two contests at the same time against the same land not allowed.

1-36; 3-564, 565, 590

276. Affidavit of, though filed, not necessarily a bar to the subsequent suit of another. 3-569

277. A defective affidavit of contest (lacking corroborating affidavit) returned by the local officers for amendment, and duly amended, will be regarded as filed, so as to bar another contest. 2-39

278. Not allowed until the first is finally adjudicated, except when the first is illegal. (See 4-583.) 2-216,

248, 282, 293, 297

279. Not allowed until final determination of first. 1-132,

155; 2-295; 4-470; 12-334

280. Not barred by a contest illegal on its face. 2-259

281. Affidavit for contest against an entry already involved in litigation should be received, but no action taken thereon until the pending case is determined.

3-512; 5-231, 263, 350, 435, 453; 7-26, 400, 423, 430; 9-18, 227, 490, 579

282. Proceedings under a second, should not be allowed pending final disposition of a prior case involving the same land. 21-275

283. While pending, precludes action on the subsequent application of another to proceed against the entry in question. 15-27

284. Allowed during the pendency on appeal of a prior suit involving the same land is without jurisdiction. 23-377

285. During the pendency of an appeal the local office has no jurisdiction to entertain a, affecting the land involved, and evidence submitted at such a hearing can have no effect as against the entry under attack. 23-448

286. The fact that notice issues on a, before a prior contest against the same entry has been formally closed, will not prevent a consideration of the case on its merits, when the defendant participates in the trial, and appeals asking for a judgment on the merits, as well as on the jurisdictional question, and no prejudice is alleged or shown. 28-34

287. Against an entry that is involved in a pending application for the right of amendment that necessarily calls for cancellation of such entry confers no right.

16-476

288. Within the terms of the circular on the Bundy case, and subsequently held void from inception, no bar to second.

5-231

289. Raising new question may be filed, but should be held for disposition of the pending case.

4-99,

121, 234, 463, 529; 6-234

290. An affidavit of, filed pending disposition of a prior contest should be received and held without action until final determination of the prior suit; but the right of the second contestant will be held to take effect by relation as of the date when his affidavit of contest was filed.

6-530; 13-196, 438

291. Allowed during the pendency of prior proceedings can not operate to confer any right as against the successful party in said proceedings.

26-188

292. Affidavit of, filed during the pendency of a prior contest, confers no right, if the entry is canceled under the prior proceedings, as against the intervening application to enter filed by a third party after cancellation of the entry under attack.

16-111

293. A second contestant who, in addition to the charge made in the prior suit, alleges that the contestant therein is disqualified as an entryman, is not entitled to be heard during the pendency of said proceedings; and in event of cancellation of the entry under attack as the result of said proceedings, such contestant is entitled to no priority of right to proceed against the subsequent entry of the successful contestant.

22-658

294. Pending, attacked for fraud should be disposed of before proceeding with second.

4-504; 36-445

295. Where a pending suit is attacked on the ground of fraud by one who applies to contest the entry in question, notice should not issue on such application, but the matter be held for final disposition of the pending suit.

11-315;

17-60; 26-703; 28-147

296. Filed during the period within which the first contestant is entitled to the right of appeal from an order dismissing his contest, is subject to the first if the appeal is taken in time.

12-525

297. Rejected for illegality, but pending on appeal, bars proceeding under second, though affidavit therefor may be filed.

4-583, 589

298. No rights acquired by second, if the prior pending suit results in cancellation.

1-42; 16-111; 18-43

299. No rights are acquired under a, filed after a departmental decision canceling the record entry, though the time allowed for filing a motion for the review of said decision has not expired when the contest is filed.

18-557

300. Not allowed on issues tried and determined in the first.

1-163;

3-390; 8-444; 9-217, 584; 10-232,

253, 318, 451; 15-352; 19-499;

22-91, 415; 23-485; 24-61

301. A contest charging disqualification of an entryman having been dismissed after full disclosure of the facts upon which the charge was based, hearing will not be ordered upon a second contest making the same charge.

39-418

302. The dismissal of a contest without passing on the matters charged is no bar to another contest on the same ground by a different party.

35-167

303. A second, or second hearing on the same charge, is rarely permitted, but the fact that a charge has formed the basis of a, which failed for want of sufficient proof, will not preclude consideration of the same matter, if the legal title to the land still remains in the Government, and it is made to appear that adherence to the former decision will lead to patenting public land in violation of law.

26-49

304. A second, may be properly entertained on a charge that the entryman has failed to comply with the law since the hearing in the former suit.

19-499; 23-317

305. An entryman is entitled to be heard on an issue raised as to the qualifications of an adverse claimant, though such issue may have been tried and determined as between said claimant and a third party in a prior proceeding.

23-479

306. Where a second, is filed on grounds set forth in the first, with an additional allegation as to the disqualification of the first contestant as an entryman, and the entry under attack is canceled as the result of the first suit, and the contestant therein makes entry under his preferred

right, it is not competent for the local office to order a hearing on the second, as against the entry then of record. 23-522

307. The failure of the local office to dismiss a, for default on the part of the contestant will not operate to prevent the filing of a second, and the issuance of notice thereon, nor interfere with any rights attaching thereunder. 23-234

308. Dismissed for want of due service of notice on defendant is no bar to a second suit by the same party against the entry in question on the same grounds as set forth in the first. 20-271

309. Withdrawal of, at or before hearing treated as a default and a bar to second contest by the same party, on the same ground. 1-163

310. Where contest is filed pending a prior contest and after relinquishment of land it is of no legal effect. 2-619

311. Should not be allowed when the Government has in its own interest commenced proceedings against the entry.

2-785; 8-301, 573, 578; 9-66.

211, 490, 569; 13-94, 459

312. May be refused in the discretion of the commissioner when the entry is under investigation by a special agent.

8-139

313. Offered pending proceedings by the Government should be received and held subject to the result of such proceedings; and if they fail the contestant is then entitled to proceed as of the date when his application was filed. 13-105

314. An application to contest an entry upon which final certificate has not issued, filed pending proceedings by the Government on the report of a special agent, should be received and held subject to final determination of such proceedings; and should the Government proceedings fail, the contestant is entitled to proceed against the entry as of the date his application was filed. 39-102

315. Where after an adverse report by a special agent, but prior to direction to the register and receiver to issue notice thereon, as provided by paragraph 3 of instructions of November 25, 1907, a sufficient affidavit of contest is filed against the entry, the Land Department may, in its discretion, in the absence of any evidence of collusion between the proposed contest-

ant and the contestee, suspend the Government proceedings pending termination of the private contest. 39-102

316. Hearing on, should not be ordered during the pendency of Government proceedings. 13-555; 16-58

317. Will not lie against an entry that is held for cancellation on proceedings by the Government. 15-154

318. Proceedings by the Government are no bar to a, where they are abandoned without a hearing therein. 16-22

319. Will not be allowed against an entry during the pendency of a rule to show cause why the same should not be canceled for failure to submit final proof within the statutory period. 11-102, 193

320. Filed during the pendency of Government proceedings confers no right upon contestant, but may be received and held subject to final disposition of said proceedings. 14-83; 16-35

321. Begun during the pendency of Government proceedings against the entry, or while all adverse proceedings against such entries are suspended by general order, confers no rights. 10-657; 15-234

322. Suspended on account of pending proceedings by the Government takes effect as of the date filed on failure of such proceedings. 8-579

323. In proceedings by the Government a stranger to the record will not be allowed to set up an intervening settlement claim, but must await the disposition of the pending action. 11-507

324. In proceedings by the Government to determine whether an application by an Indian to select certain tracts as an allotment shall be allowed, a stranger to the record, alleging prior settlement rights, will not be heard to set up his claim, but must await the disposition of the pending action. 26-207

325. Filed during the pendency of proceedings against the claim in question should be suspended until the disposition of the pending suit, and if cancellation results therefrom the second contest must be dismissed. 12-157

326. No preferred right is secured under a, filed during the pendency of Government proceedings against the entry of record, if such entry is canceled as the result of said proceedings. 25-63, 229

327. Will not be allowed on a charge that has been made the subject of investigation and final decision by the department. 12-317, 520, 600; 14-245

328. Not barred by rejection of final proof by the commissioner and the pendency of appeal from such action when the original entry was not held for cancellation. 6-833; 14-408

329. Affidavit of, filed after issuance of notice to the entryman to show cause why his entry should not be canceled for failure to submit final proof will not defeat equitable confirmation if the showing made is satisfactory. 14-83

330. The local office has no jurisdiction to entertain, during the pendency of a departmental order suspending the entry involved, and the subsequent approval of such action by the General Land Office after the revocation of said order will not give effect to such proceedings. 15-234

331. Not allowed while the question of the cancellation of an entry is pending. 2-134

332. As to the validity of an entry, can not be entertained while the right to make said entry is pending on appeal. 9-161

333. Election to proceed anew a waiver of rights acquired under former suit. 2-69; 3-591

334. Suit abandoned by express waiver no bar to second. 4-382

335. May be attacked on charges of fraud or collusion. 4-490, 504; 5-360, 387

336. Good faith of a, may be inquired into on the hearing. 8-248

337. When good faith of is attacked a hearing may be ordered on that issue. 10-114

338. Invalid on its face and abandoned by the contestant is no bar to new proceedings by said contestant. 10-268

339. The failure of a contestant to prosecute his suit, and a resulting order of dismissal for want of prosecution, will defeat his right to be afterwards heard on a charge substantially the same as that presented in the first instance. 26-450

340. The institution of a second, waives all rights that the contestant may have had under the first. 7-346; 29-16

341. The mere filing of a second, which is immediately withdrawn before action, except to note on records, does not con-

stitute a waiver by contestant of his right to prosecute the contest theretofore initiated. 33-85

342. The filing of a second, alleging a cause of action separate and distinct from that set up in the first, and not inconsistent therewith, does not constitute a waiver of right to proceed under the first, where the first charges a complete cause of action and is otherwise regular and valid. 33-32

343. May be brought by an unsuccessful contestant on new grounds, in which the good faith of an intervening contest may be attacked. 7-468

344. Failure of local officers to enter or record a, and issue notice thereon will not render such contest subject to the intervening right of a second contestant. 10-210

345. Wrongful dismissal of, in the local office and intervention of a second will not defeat rights under the first if said dismissal was not through any fault of the first contestant. 7-129

346. A contestant may, if in good faith, dismiss a contest and commence another against a different person. 2-64

347. Right to proceed under, when held in abeyance pending final action on the prior suit of another against the same entry, matures on the withdrawal of such suit. 11-199

348. Right to proceed under second, on dismissal of the first, can not be defeated by the intervening suit and entry of another, allowed without notice to second contestant that the first contest had been dismissed. 17-53

349. The right of a second contestant to be heard, who alleges the collusive character of the prior, in addition to his charge against the entry, can not be defeated by subsequent intervening entry made on relinquishment of the entry under attack, and with notice of the second contest. 22-346

350. Where filed in collusion with an entryman for the purpose of gaining time to sell a relinquishment and obstruct a possible later contest, and prior to the consummation of the collusive scheme a second contest is filed charging such collusion and the entryman's failure to comply with law, and at a hearing duly had

after notice to all parties the allegations of the second contest are sustained, the second contestant is entitled to a preference right to entry, notwithstanding a prior application to enter filed on relinquishment of the entry under attack and with knowledge of the second contest. 37-460

351. Where after the filing of an affidavit of contest a relinquishment of the entry is filed and a stranger to the record is allowed to enter the land, the contestant, in instances where the allegations of the affidavit are sufficient if proven to require the cancellation of the entry, and actual notice to the contestee does not appear of record, should be notified to submit affirmative proof that the relinquishment was the result of the contest, with due notice to the second entryman, who may present any, countershewing upon this question he may desire. 37-513

352. Where it affirmatively appears of record that the contestee had actual notice of the contest before the filing of the relinquishment, or where notice was by publication and was posted and published in accordance with the rules of practice, or where, in the absence of record notice the contestant establishes actual knowledge of the filing of the affidavit of contest on the part of the contestee, or some one in privity with him, prior to the filing of the relinquishment, it will be presumed as matter of law and fact that such relinquishment was induced by the contest. 37-513

353. When the contestant shall have established to the satisfaction of the Land Department that a relinquishment of the entry under contest was induced by such contest, he thereby brings himself within the conditions of the offer extended to him by said act, and will be recognized to claim the privileges thereby accorded, even as against an entryman who inadvisedly secured the relinquishment of the former entry and in good faith filed the same and himself made entry of the land in ignorance of the pending contest. 37-513

354. Where a second contest is filed charging collusion in a prior contest, notice thereof should be issued and served upon the entryman and the prior contestant and the second contestant permitted to

participate in the hearing upon the first contest by introducing evidence to support the charges made by him. 37-560

355. Should the entry in such case be relinquished prior to hearing on the first contest, notice of the cancellation of the entry should be given both contestants, and in event both apply to enter within the preferred-right period, the junior contestant should be given opportunity to prove the charge of collusion and thereby defeat the preference right of the first contestant. 37-560

356. Where the affidavit of a junior contestant charging collusion is not filed until after hearing upon the prior contest, and the entry is canceled as a result of the first contest, the junior contest will wholly fail; but the junior contestant is not thereby precluded from attacking the application of the successful contestant to enter the land, upon the ground of collusion or any other valid cause, should the latter attempt to exercise a preferred right of entry. 37-560

357. A junior contestant alleging a sufficient ground of contest against the entry and also charging the fraudulent character of the senior contest may, upon due notice to the respective parties, intervene in the proceedings on the senior contest for the purpose both of sustaining his own charge against the entry and also his charge against the senior contest. 39-340

358. The right of a second contestant to a judgment on the charge as made by him and established by the evidence can not be defeated by acts performed with a view to curing the alleged default after such contest is filed, but before notice thereof, and pending the disposition of a prior collusive contest. 22-466

359. Filed during the pendency of a prior suit must fail if before service of notice thereunder the entryman without knowledge of such contest has cured his default, and it is neither alleged nor proven that the prior suit was collusive. 23-558

360. A second, filed subject to a pending suit, abates in the event of cancellation under the prior proceeding. 25-488

361. Rights under second, abate, if the entry under attack is relinquished during the pendency of the prior suit. 20-3

362. Though a, will not be allowed on a question that has formed the basis of a prior adjudication between the same parties, such fact will not prevent the Government from canceling the entry in question if it is clearly illegal. 22-217

363. The fact that the department declines, on motion for rehearing, to remand a case for the submission of testimony on a matter newly alleged as a basis therefor is no bar to a subsequent contest in which such matter is properly put in issue. 22-324

364. A decision of the department denying a motion for rehearing does not preclude the General Land Office from directing an inquiry, in the nature of a new contest between the parties, to determine questions arising since the original hearing. 25-329, 471; 26-163

VIII. Speculative.

365. No rights acquired through speculative and fraudulent. 4-332;

5-358; 6-25, 164, 530; 10-250, 404

366. No rights can be acquired or defeated through a fraudulent or collusive. 2-583; 9-225, 314

367. If illegal, no preference right is acquired thereby. 3-341

368. Is speculative if brought for the purpose of securing a speculative entry. 8-248

369. Initiated for the purpose of fraudulently defeating rights acquired in good faith under a relinquishment confers no right. 14-383

370. Instituted for the purpose of protecting an interest sought to be obtained through a fraudulent entry is speculative in purpose and confers no right upon the contestant. 19-360

371. Brought in collusion with the contestee for the purpose of defeating justice will be summarily dismissed. 2-259

372. One person may at the same time contest one homestead and one timber-culture entry, or he may contest two timber-culture entries, if he is qualified and intends to make a homestead and a timber-culture entry. 2-277

373. Several, by same party indicative of speculative intent. 5-358, 387

374. Where one in good faith withdraws one contest he may initiate another against another person and other land. 2-64

375. The procurement of a friendly suit may be proven in support of the charge that the entry was fraudulent. 6-268

376. Initiation of, and withdrawal before trial indicates bad faith. 5-360

377. No rights are acquired through a speculative, that can be asserted as against an intervening entry. 13-132

378. The Government has no interest in the motive which influences a contestant in bringing the contest; and while a collusive or speculative intent may be set up to defeat the rights accorded a successful but *mala fide* contestant, it can have no bearing upon the rights of the entryman, whose entry must stand or fall upon the facts presented. 35-406

IX. Desert Land.

379. Against desert entry, if successful, secures the rights conferred upon contestants by the act of May 14, 1880. 3-69; 5-694, 708; 6-1, 572; 7-186; 12-41

380. Against desert entries follows the practice in preemption contests. 6-1

381. In case of joint, where all the contestants unite in similar charges, such common allegation may be taken in corroboration of the separate affidavits of. 16-329

382. Common allegations, in pending applications of different parties to contest the same desert entry, may be accepted as corroborative of the separate affidavits of. 18-148

383. The right of two or more contestants to unite in a contest against a desert entry can not be recognized to the exclusion of intervening contestants. 18-148

384. A charge that land is not now nor never was desert in character is sufficient to warrant a hearing. 18-148

385. An allegation, equivalent to a charge of illegality in that the land was nondesert at date of entry, is sufficient to warrant a hearing. 18-420, 465

386. Forfeiture not warranted except on a clear preponderance of the evidence. 9-6

387. Must fail if the default is cured prior to notice and such action is not induced by knowledge of the impending suit, but is the result of a previous *bona fide* intent. 10-657

388. The charge that the assignee of a desert-land entry is disqualified to take by assignment is sufficient basis for a contest. 38-253

389. The acts of July 26, and August 4, 1894, extending the time for final proof, are applicable to an entry under the act of 1877, in default as to final proof at the passage of said acts; and an entry occupying such status is not thereafter subject to attack for noncompliance with law, until after the expiration of the extended period provided for in said acts. 25-150

390. The pendency of a departmental order suspending an entry deprives the local and General Land Office of jurisdiction to hear and determine a. 10-657; 16-35; 18-420, 465

391. On the ground of nonreclamation is premature, if the entry was at one time suspended, and the statutory life of the entry has not expired exclusive of the period of suspension. 25-533

392. In determining whether a, is premature where the entry has been suspended, and the suspension revoked, time should be held to run against the entryman from notice of the revocation. 21-394

393. The suspension of an entry does not preclude, where the order has been vacated, and the entry has run the statutory period, exclusive of the period of suspension. 20-324

394. Application to proceed against a suspended entry should be held until the suspension is removed, and where the order removing the suspension recognizes the right of contestant to proceed, an intervening relinquishment will not defeat such right. 16-329

395. A contest based solely upon the ground that the entry is invalid because the land is not of the character subject to such entry, may be allowed, notwithstanding the entry, at the date of the initiation of the contest, was embraced in an order of suspension. 35-361

396. In case of the suspension of an entry the entryman is not compelled to

comply with law during the suspension, and contest on the ground of failure to comply with the law during such period should not be allowed. 34-362

397. Where contest against a suspended entry, on the ground of failure to comply with law, is erroneously allowed, and hearing had, the testimony, having been taken without jurisdiction, can not be considered upon removal of the suspension. 34-362

398. A contest based solely upon the ground that the land is nondesert in character may be entertained during suspension of the entry; but a contest charging failure to comply with law should not be entertained during such period where the suspension becomes effective prior to expiration of the statutory life of the entry. 34-456

399. A direction by the Secretary to withhold patent on all desert entries within a given land district does not amount to a suspension of such entries, and the jurisdiction of the local officers to consider contests against the same is in no wise affected thereby. 34-426

400. The authority of the local officers to order a hearing on a contest is in no wise affected by an order suspending all desert entries in the township in which the entry is situated, where the order of suspension was not issued until after expiration of the statutory life of the entry. 34-426

401. A charge of nonreclamation, within the statutory period, should not be entertained where it appears that the land has been reclaimed prior to the initiation of the contest. 25-303

402. Filed at a time when the entryman is engaged in curing his default will not defeat his right to perfect his claim with a view to equitable action where he has shown diligence from the first and his failure to effect reclamation is due to a mistake. 16-366; 18-96

403. On the ground of noncompliance with law must fail where it appears that prior to expiration of the entry the land was effectually reclaimed and failure to maintain the requisite water supply was due to the wrongful act of contestant; nor will such a contest defeat equitable action on the entryman's final proof submitted out of time. 17-36

404. On the ground of failure to effect reclamation within the statutory period must fail where the Government has already examined into the status of the entry and held the same intact. 17-255

405. A charge of failure to reclaim is not sustained if water in sufficient volume has been brought on the land and so disposed as to render it available. 18-16

406. The failure of an entryman under the act of 1877 to advise the Government, within the lifetime of such entry, of his intention to accept the provisions of the amendatory act of 1891, leaves said entry subject to contest as if said act had not been passed. 19-121, 231

407. In case of a, against an entry made under the act of 1877, where election to proceed under the act of 1891 is pleaded by way of special defense, it is incumbent upon the defendant to establish the facts necessary to sustain the plea. 20-218

408. On the ground of noncompliance with law, filed during the pendency of the general order of February 7, 1882, suspending such proceedings, confers no right. 10-657

409. The local officers may properly reject if in their judgment the charge is premature. 21-494

410. Charging failure to make the requisite annual expenditure, may be brought prior to expiration of time allowed for submission of final proof. 31-10; 36-106

Charging that the entryman "has failed to make yearly proof for the first year as required by law," states a sufficient cause of action. 31-276

411. A stranger to the record will not be heard to allege that a contest is premature where prior to the day set for hearing the entry is relinquished. 15-319

412. The right to proceed with, is not defeated by a subsequent relinquishment. 15-320

413. Reclamation by a transferee prior to initiation of, will not prevent cancellation if it is shown that the entry was secured by false testimony. 15-5

414. Pendency of, does not excuse non-compliance with law. 13-271

415. In a contest against a desert entry, the annual proofs offered by claimant, and forming part of the records of the Land Department, although not put in evidence

at the hearing on the contest, may, where the truth of any of the statements made in said proof is the main question in issue, be properly judicially noticed with a view to determining the truth or falsity of subsequent statements made by the same witnesses concerning the same facts. 35-147

X. Homestead.

See V HEREOF.

416. Application for the land is not required. 2-40, 65; 3-209; 4-424. 462

417. An application to enter filed by the contestant at the time of filing his affidavit of, confers no right in event he secures a judgment of cancellation, and can not be used by him in the exercise of his preferred right. 22-96

418. Does not require that contestant should assert a claim to the land. 2-219; 8-584

419. May be instituted by alien. 5-259

420. Offering a relinquishment for sale is not a sufficient ground of contest. 2-40; 4-553

421. May be properly entertained upon any charge affecting the legality of the claim. 9-209

422. Local office may order, on charge of illegality. 4-461

423. Charging incompetency of the entryman under the law to perfect his entry is a good ground for. 10-274

424. Charging illegality—in that the residence, prerequisite to the execution of preliminary entry papers before a clerk of court, had not been acquired—warrants cancellation if the charge is sustained. 6-425; 7-245; 8-1; 9-209; 10-61; 15-337

425. A charge that the preliminary affidavit was executed before an officer not authorized by law to administer the requisite oath, warrants cancellation, if proven. 18-92

426. Will not lie on a charge that the preliminary affidavit was executed before a United States commissioner outside the county in which the land is situated. 22-486

427. A clerical omission occurring in an original homestead affidavit does not furnish proper ground for. 22-63

428. An allegation of settlement subsequent to that set up in support of a prior adverse entry affords no basis for. 19-507

429. Speculative character of entry shown as charged by proof of intent to avoid compliance with law in the matter of residence. 18-55

430. In the case of, against an entry made under the general homestead law by a native-born Indian, who has abandoned the tribal relation, it is not necessary to serve notice upon the Indian agent or Commissioner of Indian Affairs. 27-502

431. Cultivation is an essential requisite to compliance with the homestead law; and a charge of failure to cultivate furnishes a proper basis for a hearing. 29-561

432. On the ground alone that the land is unfit for cultivation, and of no value except for the timber thereon, will not be entertained. 24-310

433. The allegation that land "is more valuable for the timber and stone," does not constitute a sufficient basis for. 34-115

434. Land unadapted to any agricultural use is not subject to entry under the homestead law; and an affidavit charging such inadaptability is sufficient basis for a hearing. 38-265

435. Local office may order a hearing to determine the right of a homestead applicant as against a railroad grant. 10-281

436. Will lie against soldiers' homestead for failure to settle, improve, and enter within six months after filing, and the successful contestant has a preferred right of entry. 3-17

22-245; 27-502

437. Soldiers' homestead not subject to, for failure to settle and improve within six months from filing when initiated prior to December 15, 1882. 3-213

438. General charge of abandonment not sustained by proof of failure to settle and improve within six months after filing under section 2304, R. S. 3-507

439. Will not lie against an application to make a soldiers' additional entry. 15-147

440. Will lie against a soldiers' additional entry on the ground of its speculative character. 19-163; 20-516

441. A charge that a soldiers' additional entry has been made through a sale of the right is a proper subject for investigation. 15-114

442. Will not lie against a declaratory statement, as it does not constitute an appropriation of the land and is no bar to the entry of another. 18-494

443. Against a soldiers' declaratory statement is invalid, and a subsequent amendment thereof does not confer any priority as against an intervening contest begun after the homesteader has made entry under his declaratory statement. 23-2

444. A soldiers' declaratory statement does not segregate the land and is therefore not subject to contest; hence the proper method of asserting a settlement claim adverse thereto is by application to make entry within the statutory period after settlement. 27-597

445. A charge that a second entry under section 13, act of March 2, 1889, was allowed on a showing insufficient under the regulations does not warrant a hearing, in the absence of affirmative allegations as to the entryman's actual disqualification under the statute. 27-557

446. Before final certificate an entry is open to attack on the ground that the land is mineral in character, without regard to the date of the alleged mineral discovery. 15-290, 514

447. Discovery of mineral on the land after final entry does not render the entry subject to. 7-570; 15-37

448. Against a homestead entry, commuted for townsite purposes, will not be allowed after the issuance of final certificate except upon a clear showing of facts that necessarily call for action on the part of the Government. 19-384

449. By preemptor to clear record of subsequent homestead claim will not be allowed. 2-584

450. Compliance with law pending, subject of another hearing. 6-28

451. For abandonment against settlers absent under act of June 4, 1880 (destruction of crops), would not lie until April 1, 1882. 2-28

452. It is competent for a contestant alleging abandonment prior to April 1,

1882, to show that the settler did not meet with a loss or failure of crops. 2-111

453. The act of February 13, 1911, granting certain homestead entrymen "until" May 15, 1911, within which to establish residence, gives such entrymen the whole of said day in which to begin residence; and a contest filed on that day, charging abandonment, is premature. 40-547

454. The act of February 13, 1911, merely extends the time within which certain homestead entrymen are required by law to establish residence until May 15, 1911; and where residence is not established on or before May 15, on an entry within the act made more than six months prior to that date, such entry is subject to contest for abandonment immediately thereafter. 40-590

455. Leave of absence is no protection against a contest for abandonment where the entryman prior to such leave has failed to comply with the law. 17-540

456. An allegation to the effect that the evidence on which a leave of absence was obtained is false and fraudulent, must be affirmatively established to warrant favorable action. 20-319

457. Leave of absence granted under section 3, act of March 2, 1889, does not preclude a, during such period on account of noncompliance with law prior thereto. 16-348

458. A leave of absence procured by an entryman, who in fact had not established residence, will not defeat a subsequent, in which abandonment is charged. 19-407; 21-428; 29-54, 203

459. Where a leave of absence is granted under the act of March 2, 1889, a charge of abandonment will not lie until the expiration of six months after the time for which the leave of absence was granted. 18-331; 26-268; 37-709

460. For abandonment will not lie where the absence of the entryman is due to forest fires and is excused under the act of January 19, 1895. 27-691

461. A homestead entryman improperly allowed an extension of time within which to make commuted payment, will be protected as against an intervening contest charging noncompliance with law, where it appears he had complied with the law up

to the time he left the land under authority of said extension. 28-300

462. Based on a charge of noncompliance with law in the matter of residence and improvements should not be entertained where the entry is suspended on account of a defective survey. 10-297; 12-56, 370

463. Where an entry is suspended, a, initiated prior to the expiration of six months from date of entry, excluding the period of suspension, is premature. 22-692

464. A charge of failure to establish residence is fairly met where the evidence shows that during the period involved the township plat was suspended for the settlement of a private claim. 15-215

465. On the ground of abandonment must charge that the absence was not due to military or naval service during time of war; act of June 16, 1898, and circular of July 8, 1898. 27-146

466. The act of June 16, 1898, in requiring that under all contests in which the charge is abandonment, it must be proved that the settler's absence was not due to military or naval service, does not prescribe what shall be the measure of proof, nor of what it shall consist; and the proof in such case will be held sufficient when it shows with reasonable certainty that the absence was not due to such service. 29-625

467. Proof of nonmilitary service under the act of June 16, 1898, need not be made in specific words; it is sufficient if facts appear which necessarily preclude the existence of the fact necessary to be disproved. 35-607

468. The requirement in the act of June 16, 1898, that the allegation of nonmilitary service shall be "proved at the hearing," is sufficiently complied with if at the time of the hearing there is in the record evidence proving the fact, and this may be the testimony of witnesses taken at the hearing, depositions taken prior to the hearing, stipulation of the parties, or admissions by the defendant. 33-248

469. The Land Department will take judicial notice of the existence of any war in which the United States is engaged; and the fact that during the period of abandonment charged in a contest against

a homestead entry the United States was not engaged in any war is *prima facie* evidence that the entryman's alleged absence was not due to military service.

35-625

470. In a contest against a homestead entry on the ground of abandonment it is not necessary, under the act of June 16, 1898, to either allege or prove that the entryman's absence was not due to military service, where the United States was not engaged in war during the period of abandonment charged.

38-317, 563

471. A woman is disqualified to legally engage in the service of the United States as a "private soldier, officer, seaman, or marine"; and where a homesteader against whom contest has been brought on the ground of abandonment is a woman, such fact sufficiently proves, in the absence of any other evidence, that the default alleged was not due to service in the Army, Navy, or Marine Corps within the meaning of the act of June 16, 1898.

35-625

472. In all contests initiated subsequent to the act of June 16, 1898, on the ground of abandonment, it must be alleged that the settler's absence from the land is not due to his employment in the Army, Navy, or Marine Corps of the United States.

33-122

473. No jurisdiction is acquired by the local officers in case of a contest on the ground of abandonment, commenced subsequently to the act of June 16, 1898, unless there be filed a "preliminary affidavit" to the effect that the settler's alleged absence was not due to employment in the military service of the United States, or the requirement that such affidavit be filed be waived by the entryman.

33-260

474. In case of a contest on the ground of abandonment, it is not essential that the charge required by the act of June 16, 1898, that the entryman's absence was not due to service in the Army, Navy, or Marine Corps, shall follow the wording of the statute, it being sufficient if the language employed in effect or by necessary implication excludes military, naval, and Marine Corps service as the cause of absence.

34-534

475. The provision in the act of June 16, 1898, requiring in case of a, on the ground of abandonment at a time when the United States is engaged in war, an allegation in the affidavit that the absence of the settler was not due to employment in the Army, Navy, or Marine Corps, is mandatory, and noncompliance therewith can not be cured by amendment after service of process in a contest to which the statute applies, and in which no appearance is made by the defendant.

29-484

476. The requirement of the act of June 16, 1898, that the affidavit, in case of a, on the ground of abandonment, at a time when the United States is engaged in war, must allege that the absence of the settler was not due to employment in the Army, Navy, or Marine Corps, is for the sole protection of the settler, and will be considered waived by him where he personally appears at the hearing and makes a general defense, without specifically objecting to the affidavit because of the omission therefrom of the required allegation, although he in general terms challenges its sufficiency.

30-57, 222

477. A long period of abandonment having been shown to exist at the time of the outbreak of the war, the presumption is that its continuance during the war was due to the original cause or intent, and not to the entryman's employment in the Army, Navy, or Marine Corps.

30-294

478. In determining whether the allegations in an affidavit of, are sufficient under the act of June 16, 1898, the matter to be considered is whether said affidavit charges abandonment during a time of war, and if it does, then the requirement that it must also contain the allegation that such abandonment was not caused by military or naval service, must be observed.

30-464

479. A homestead entryman is entitled to six months from entry within which to establish residence, and where prior to the expiration of such time he enlists in the military service of the United States he is within the saving provisions of the act of June 16, 1898, and contest against his entry will not lie during the continuance of such service, even though he may never have established actual residence

upon his claim nor in any manner improved the same. 32-251

480. For abandonment will not lie until the expiration of six months and one day after entry, exclusive of the day of entry. 2-69, 151

481. A charge of failure to reside upon and cultivate land embraced within a homestead entry, filed prior to the expiration of six months from the date of entry, is premature. 27-247

482. The rule that a contest is premature if begun before the expiration of six months and a day after entry can only be invoked by the contestee. 8-400

483. Where an affidavit of, is premature and subject to rejection for such reason, but such action is not taken, and the local officers, after the expiration of more than six months from the date of the entry, authorize publication of notice, the contest should not thereafter be dismissed as premature on the motion of a stranger to the record. 21-467

484. Where an affidavit charging abandonment is rejected because prematurely tendered before the expiration of six months and one day after entry, and a second affidavit is filed by another after the expiration of that period, the second contest is entitled to priority, notwithstanding the affidavit was executed prior to the expiration of the period mentioned, especially where both affidavits were executed the same day. 38-187

485. The authority of the Land Department to entertain a, is not abridged by the fact that the affidavit of, is filed before the expiration of the period covered by the charge, if the notice is served after such period. 27-654

486. The rule in *Baxter v. Cross* governs in all cases after it was rendered. 3-15

487. On charges of abandonment, sale, and relinquishment not premature, though within less than six months after entry. 5-262; 28-315

488. Fraudulent intent in making entry is not shown by the execution of a relinquishment or an offer to sell the improvements. 22-150

489. Charging sale of relinquishment must fail where it appears that the instrument was executed during the sick-

ness of the entryman and when he could not go upon the land, was returned to him and retained in his possession. 13-639

490. The sale of the land embraced within an entry is ground for, at any time after the fact of such sale becomes known. 12-510

491. A charge of abandonment will not lie against a homestead claimant prior to the allowance of his application to enter where his rights depend on such application. 10-510; 26-219

492. A departmental decision awarding priority of right to a homestead claimant as against a prior preemptor, and directing suspension of the preemption entry to await consummation of the homestead claim, does not relieve the homesteader from the necessity of showing compliance with law during the time prior to such decision where such question was not then taken into consideration. 19-117

493. Charge of abandonment must fail when the absence is due to judicial restraint. 5-6; 7-532; 15-554

494. Though premature, may be carried to cancellation in the absence of objection or appeal. 4-552

495. Initiation of, prior to the expiration of the six months allowed for establishment of residence will not prevent cancellation if the proof, submitted after such period, shows permanent abandonment. 10-211

496. Charging abandonment and failure to establish residence is premature if brought prior to the expiration of the period accorded under the law for the establishment of residence. 18-144

497. To sustain the charge of abandonment it must be shown that such abandonment has continued for six months, and the complaint must so allege. 10-105

498. An allegation that claimant has never resided on the land, that his home and place of business is elsewhere, is equivalent to a charge of abandonment, and a notice issued thereon to answer the charge of abandonment is not bad for variance. 13-121

499. A charge of abandonment is not sustained by the mere fact that the entryman united with others in locating a

placer claim, unauthorized by law, on part of the land covered by his entry.

18-416

500. A charge of abandonment and failure to reside upon the land is sufficiently specific where it is set out "that the defendant has wholly abandoned said tract, that he has changed his residence therefrom for more than six months since making said entry, and that said tract is not settled upon and cultivated by said party as required by law."

17-540

501. Where abandonment and change of residence are charged, and the notice cites the entryman to respond to the charge of abandonment, the variance is not such as to prejudice the rights of the entryman.

10-294

502. A charge of abandonment, change of residence, and failure to settle is not an admission that residence has been established and does not estop contestant from proving failure to establish residence as required by law.

10-346

503. A charge of abandonment is supported by evidence showing failure to establish residence within six months after entry.

11-418, 602

504. On the ground of abandonment should show that the alleged abandonment was prior to final entry.

10-556

505. A charge of abandonment will not be sustained, where it appears that the entryman duly established residence on the land, and that during his absence his family remained thereon.

28-181

503. Of divorced wife against the homestead entry of her former husband on the ground of abandonment must fail where it appears that his family lived upon the land during his absence and that she forcibly retained possession on his return thereto.

7-35

507. A divorced wife who remains on the land covered by the homestead entry of her husband, and shows the fact of his willful desertion and abandonment, is entitled to a judgment of cancellation with a preferred right of entry.

18-9

508. Of divorced wife against former husband's claim for abandonment permissible.

1-89

509. The good faith of an entrywoman in securing a divorce, as affecting her qualifications under the homestead law, is

not a matter for investigation through a, under the act of May 14, 1880. 29-96, 168

510. Where a woman makes application for homestead entry as a deserted wife, subsequently procures a divorce on the ground of desertion, and entry upon her application is afterwards allowed, in a contest against such entry, on the ground of fraud and collusion, the department is not bound by the finding of the court in the divorce proceeding, but may determine from the proof whether or not she was a deserted wife at the time of her application.

31-382

511. Only the wife shall be heard to show her husband's desertion of her in proof of abandonment. 2-81; 7-35; 21-152

512. In a contest on the ground of fraudulent inception or abandonment priority of settlement can not be considered.

2-119, 620

513. Failure of the wife to reside on the land until after notice of, does not impeach the good faith of claimant where it is apparent that her final removal is in compliance with a previous *bona fide* intention of the claimant to make his home on the land.

11-543

514. Testimony to the effect that an entrywoman has married and moved to her husband's home, when the husband himself is at the same time a homestead claimant, is proper evidence under a general charge of abandonment.

21-360

515. Charging that the entrywoman had, since making entry, married and gone to reside with her husband upon his uncompleted homestead entry, but containing no charge that she had abandoned her claim for more than six months prior to the initiation of the contest, should not be entertained.

34-463

516. Charging abandonment and failure to maintain residence must fail where the entryman dies within less than six months after entry and prior to establishment of residence, but the heirs thereafter cultivate and improve the land.

9-31;

14-141; 22-181

517. The expired entry of a deceased homesteader can not be successfully contested for abandonment or noncompliance with law if it appears that the entryman in his life earned a patent to the land involved.

15-27

518. A charge of failure to improve and cultivate will not lie against the heirs where the entryman dies within less than six months of the expiration of the statutory period of residence required of the entryman. 15-182

519. A charge of failure to cultivate, brought against the heirs within six months after the death of the entryman, is not sufficient ground to support a. 28-5

520. Failure of a homesteader in his lifetime to establish residence, due time having elapsed therefor prior to his death, and the subsequent failure of his heirs to reside on the land, require cancellation of the entry. (See 32-650.) 22-511

521. A charge that neither the entryman nor his heirs established residence must fail where it appears the entryman's default was due to sickness and poverty and the widow subsequently cultivated the land. 15-252

522. A charge of failure to comply with the law against the heirs of a homesteader can not be sustained, where such failure is due to the wrongful acts of contestant. 19-511

523. In determining whether the heir has complied with law as to cultivation and improvement, his means, good faith, and the fact that compliance had been resumed prior to contest, are all entitled to consideration. 25-544

524. An affidavit of contest against the heirs of a deceased homestead entryman which charges only failure to reside upon the land is defective, and should include also a charge that the heirs have not cultivated the land. 39-453

525. The charge in an affidavit of contest that the heirs of a deceased entryman have not "in any way improved" the land is equivalent to and constitutes a sufficient charge of failure to cultivate. 39-453

526. An affidavit of contest against the heirs of a deceased entryman which fails to allege the death of the entryman and the date thereof is defective, but subject to amendment in that respect if objected to; but where hearing is had on the contest without objection on the ground of such omission and the evidence adduced establishes the fact and date of death of

the entryman, objection on that ground will not thereafter be considered. 39-453

527. Under section 2297, R. S., it is not essential that "abandonment" for more than six months "immediately preceding" the contest should be specifically charged. 9-255

528. Proof that claimant has actually changed his residence or abandoned the land for more than six months at "any time" warrants cancellation if the default has not been cured. 9-255

529. On the charge of abandonment may be entertained following a suit as to priority of right. 5-149

530. In determining whether the charge of abandonment will lie, claimant's term of military service may be computed as forming part of the requisite residence. 14-507

531. The designation by the entryman, under a Territorial statute, of lands claimed as a "homestead," different from those embraced in his entry, does not raise any presumption of abandonment where said law permits a person to designate land on which he does not reside as a "homestead." 22-248

532. Homestead entry not the proper subject of, seven years after date of entry. (See 3-136.) 1-112

533. May be properly entertained on a charge of abandonment, though the statutory life of the entry has expired. 12-285

534. A charge of failure to submit final proof within seven years from date of entry states no cause of action where entryman is entitled to the additional year conferred by the act of July 26, 1894. 24-398

535. Proof of abandonment covering a period subsequent to the term of residence required does not warrant cancellation. 14-507

536. Will lie against homestead entry after the expiration of seven years from date of entry. 3-136; 5-229; 15-27

537. The submission of final proof within the lifetime of a homestead entry prevents expiration thereof during pendency of the proof; and it is competent for the Land Department at any time while the entry remains in force to entertain a contest against the same. 38-190

538. May be entertained though not begun until after the expiration of five years from date of entry. 10-111

539. A charge of abandonment is not established where the absence shown is subsequent to a period of five years' continuous residence. 27-308

540. Filed five years after entry is not sufficient if confined to the words of section 2297, R. S., but should set forth the specific default and that it has not been cured. 9-530; 20-185

541. After the expiration of five years from date of entry a charge of abandonment will not be entertained, in the absence of an allegation that the entryman failed to comply with the law during the statutory period. 24-398

542. Against homestead entry for want of residence must follow section 2297, R. S. 3-560

543. No such right is acquired by a contest by one having no claim to the land, but who is seeking merely to secure a preference right, prior to the cancellation of the entry, as will prevent the acceptance of final proof on such entry, even though not submitted until after the expiration of the statutory period, and the submission of the case to the board of equitable adjudication for appropriate action. 33-21

544. Must fail if the default charged is in good faith cured prior to service of notice and such action is not induced by the filing of the contest. 7-198; 9-153, 299, 531; 11-400; 14-141

545. An allegation of failure to comply with the law does not furnish a basis for cancellation if not made until after the alleged default has been cured. 26-384

546. A charge of abandonment must fail where the entryman is residing upon the land when notice of the contest is served. 18-3

547. Under a, on the ground of abandonment, the default will be held cured where prior to issuance of notice the wife of the entryman returns to the land, and it does not appear that he has established a residence elsewhere. 19-515

548. An entry attacked for failure to reside on the land will not be canceled where the entryman in fact has established and maintained residence on an adjacent tract, to which he acquired title

after his entry, but removed to the land covered by his entry prior to notice of the contest, and no bad faith is shown. 21-15

549. Actual knowledge of an impending contest will not prejudice the claimant if his subsequent compliance with law is in pursuance of a previous *bona fide* intent. 9-299

550. Acts in compliance with law performed by claimant prior to notice, but induced by the impending suit, will not cure the default nor defeat the contest. 13-121; 21-17; 22-581; 25-44

551. Against a final entry on the ground that the entryman is not a citizen must fail if the defect is cured prior to notice and such action is not induced by the initiation of. 10-474; 11-71

552. On the ground of noncompliance against an entry made for the minor heirs of a deceased soldier or seaman must fail if the land is cultivated and improved for five years succeeding date of entry. 10-482, 528

553. Charging want of prerequisite residence in filing preliminary affidavit and alleging an adverse priority must fail if such priority is not established. 9-20

554. Acts performed after initiation of, will not relieve the entryman of the consequence of noncompliance with law prior thereto. 10-133

555. An offer to sell the land may be proven in support of the charge that the entry was speculative and fraudulent. 6-268

556. Proof that an entry is made in bad faith and not for actual settlement and cultivation warrants cancellation. 18-540

557. A successful, against a homestead entry, embracing land covered by a prior preemption filing, will not defeat the superior right of a minor claimant under the preemption filing. 25-384

558. The hardship resulting from an order of cancellation does not warrant the department in ignoring the requirements of law. 8-584

559. Failure to establish residence within six months from date of entry warrants cancellation if default is not cured prior to. 9-523

560. A homestead entry must be canceled on due showing of a prior adverse settlement right. 26-301

561. The failure of a homesteader to make a living on his land is not necessarily any evidence of his lack of good faith. 20-319

562. A homestead claim set up to defeat the entry of another will be canceled if the evidence shows noncompliance with law. 6-294

563. An honest settler's rights may not be defeated on technical and speculative grounds. 2-163

564. Against the entry of an insane homesteader must fail if the entryman complied with the law up to the time he became insane. 24-494

565. The physical condition and poverty of claimant may be taken into consideration, where good faith is apparent, in determining whether there has been substantial compliance with law. 11-166; 22-422

566. On the ground of priority of settlement, must fail if the allegation is not established by some preponderance of the evidence. 23-50; 24-584; 25-273

567. In a, involving priority of settlement, doubt as to the fact of priority, or a finding of simultaneous settlement, does not justify an arbitrary division of the land between the parties, or an award thereof to the highest bidder. 23-201, 400

568. On the ground of prior settlement, the burden is upon contestant to show that his settlement antedates both the entry and settlement of contestee, and if he fails to show such priority the entry must stand. 23-201

569. The general rule that a settler claiming priority over one having an entry of record must establish his claim by a preponderance of the evidence may be so far departed from, in a special case, as to reach an equitable conclusion, where, on the facts shown, justice and equity require a division of the land between the parties. 24-158

570. No right can be secured under the contest of one attacking an entry ground of prior settlement, in the absence of some special equity shown, if the charge as made is not established by a preponderance of the evidence. 24-189

571. On the ground of priority of settlement, must fail if it appears that contestant's alleged acts of settlement were

not followed up by the establishment and maintenance of residence. 21-97;

22-280; 23-87; 25-103, 279, 329; 27-562

572. In a, on alleged priority of settlement, it is not essential that the affidavit should set forth that contestant has established residence if, at such time, residence on his part is not necessary. 25-380

573. Pending, will not bar relinquishment and right to make new entry under the act of March 3, 1879. 1-93

574. Based upon the charge that the entryman is disqualified by reason of being the owner of 160 acres of land, proof of the technical vesting in the entryman, by devise or operation of law, of a naked legal title that is, or may be, subject to outstanding claims against the estate of the person from whom the title moves, will not, in itself, be held to disqualify the entryman who thus acquires the title, but it must be further shown that the title so acquired is a beneficial one. 34-330

575. Rejection of commutation proof does not necessarily result in cancellation of the entry; and the fact that commutation proof was rejected by the local officers and the General Land Office and is pending before the department is not, in such case, sufficient reason for refusing to accept a contest based upon a charge which if proven would necessitate cancellation of the entry. 38-563

XI. Preemption.

See V HEREOF.

576. Should not be allowed against a preemption claim before offer to make final proof. 1-469;

3-517; 4-134; 5-176; 9-92

577. Against preemption claims should only be allowed in exceptional cases prior to the offer of final proof. 2-583;

4-235; 7-126

578. Against an expired and abandoned preemption filing could not in any event inure to the benefit of the contestant, and will not be allowed. 21-540

579. It is not the policy of the Land Department to permit, against filings, yet judgment on the merits may be given where defendant has made default and the evidence justifies cancellation. 20-33

580. A definite charge supported by evidence at time of final proof, with payment of costs, constitutes a, entitled to recognition. 20-325

581. After hearing and decision on the merits it is too late for the preemptor to suggest that the contest is premature. 4-236

582. Proceedings on offer to make final proof obviate the necessity of formal contest in case of conflicting preemption claims. 3-112

583. Proceedings on protest against preemption final proof do not constitute. 22-188

584. By a preemptor to clear the record of a prior preemption claim will be allowed in exceptional cases only. 2-583

585. Will not lie against a preemption filing for the purpose of securing a preference right through its cancellation. 12-639

586. Not allowed against a filing by a stranger to the record. 1-435, 446

587. Preemption claim, if put in issue, may be canceled before final proof is offered. 5-260

588. By a subsequent adverse claimant will lie against a preemption for non-compliance with requirements. 2-596

589. Nonappearance of adverse claimant under notice of intention to make final proof, does not bar subsequent, on his part. 3-142

590. On allegation of fraud a hearing will be had even after approval of final proof and allowance of entry. 3-54

591. A charge of fraud must fail if the allegation is not established by such evidence as will convince a reasonable mind. 13-74

592. Where it is made to appear that the entry was procured through false and fraudulent statements it must be canceled. 13-594, 612

593. A final entry should not be canceled on the ground that it was made in the interest of another, except upon convincing proof. 15-445

594. Based on alleged mineral character of the land requires proof that mineral was known to exist prior to final entry. 13-108

595. Charge of abandonment will not lie on the ground of failure to establish

and maintain residence prior to the allowance of application to file declaratory statement. 10-616

596. Abandonment must be proved affirmatively by a contestant alleging it. 2-625

597. An allegation of abandonment after the submission of final proof is not sufficient ground for. 12-492; 18-20

598. During pendency of, entryman must comply with law. 11-256

XII. Swamp Lands.

599. Will lie against a selection of swamp land. 5-31; 14-658

600. Against a swamp selection, if successful, may secure a right of entry. 4-497

601. Against a swamp selection is not a statutory right, but recognized as an aid in determining the true character of the land. 12-64

602. Against a swamp selection should not be allowed except on *prima facie* showing that would warrant rejection of the claim under the grant. 12-64

603. Against a selection of land reported as of the character granted should not be allowed, except upon a showing that would warrant cancellation if the allegations were proven. 13-259

604. Against selections should not be allowed during the pendency of Government proceedings instituted to ascertain the character of the land. 13-259

605. The local office has no authority to entertain and act upon an application to contest an approved swamp-land selection. 23-591

XIII. Timber Culture.

See V HEREOF; APPLICATION, IX.

606. Forms for use in beginning. 1-653

607. Rules governing homestead are applicable in timber-culture. 1-132

608. Circular of August 18, 1887, directing the disposition of applications to enter, filed with contest, on termination of suit. 13-670

609. The wife of the entryman is entitled to notice where it is known that the entryman has disappeared and his whereabouts can not be discovered. 12-203

610. In proceedings against the entry of a deceased person the devisee of the sole heir of the entryman is the only party having an interest in the entry. 21-8

611. An agent employed to care for a timber-culture entry may properly secure counsel to appear on behalf of the entryman in the event of a, against the entry. 17-504

612. Should not be allowed to proceed while the section including the land involved is suspended from entry on account of conflict with a private claim. 16-450

613. For default during period the township plat is suspended will not lie. 16-403

614. Contestant need not be a party in interest. 2-219

615. No authority for, in the absence of application to enter. 1-152, 160, 626; 2-290; 3-513, 571

616. Section 3, act of June 14, 1878, not in conflict with section 2, act of May 14, 1880. A contestant under the later law is defined by the earlier. 1-160, 626

617. Circular of December 20, 1882, on the Bundy-Livingston ruling. 1-651

618. Circular of February 13, 1883, under Bartlett-Dudley decision. 1-652

619. The omission to file an application for the land in a timber-culture contest may be remedied prior to or at the hearing, if no other right has intervened. 2-296, 319

620. Tender of application to enter by the contestant held sufficient to validate subsequent proceeding. 2-245

621. Second allowed where first was dismissed under the rule in Bundy's case, with permission to use, on stipulation, evidence already taken. 1-160

622. The contestant, having filed application to enter before dismissal of his contest, is awarded a new contest from the date of such filing, in the absence of an intervening adverse right. 3-95

623. Right of, not defeated by defective application to enter when an offer to amend at the hearing was made. 5-211

624. If jurisdiction is lawfully acquired, it can not be divested by the subsequent act of the contestant whereby he becomes disqualified to enter under the application filed with his contest. 5-684

625. Held good, as it followed the practice in force and there was an application to enter prior to the order of dismissal. 4-587

626. Prosecuted to final judgment prior to the Bundy decision not affected thereby. 4-246

627. In the absence of objection from the defendants, the want of formal application to enter will be held as though waived. 4-241

628. Against timber-culture entry must show contestant's qualifications for entry. 2-292

629. On initiation of, tender of entry fees and commissions (with application to enter) not required. 5-684

630. Application to enter not required at initiation of. 7-9; 10-398; 11-199

631. Not by one who has exhausted his rights under homestead and timber-culture laws. 2-276

632. The right of, against a timber-culture entry may be exercised by an applicant for the land under the preemption law. 5-591

633. Follows right of entry in case of default by the entryman. 4-540

634. At the moment of default the land is open to entry by the first legal claimant, notwithstanding an illegal contest is pending against it. 2-266, 283, 297, 318

635. To clear the record is of the nature of action *in rem*. 4-540

636. An application to enter land embraced in the timber-culture entry of another does not give applicant the status of a contestant under section 3, act of June 14, 1878, in the absence of notice thereof to the record entryman. 17-585

637. An allegation of offer to sell the land not sufficient ground for. 4-370; 5-314; 6-268; 7-262

638. Sale and relinquishment good grounds for. 4-245, 522; 8-294; 9-565

639. Charging the execution of a relinquishment, if established, does not call for cancellation in the absence of fraud or bad faith on the part of the entryman. 15-405

640. A charge that the entryman "has failed to comply with the law" does not present any fact for proof, and on objection thereto should be amended. 11-575

641. A general charge of abandonment, unaccompanied by a specific allegation of noncompliance with law, will not warrant a hearing. 13-107

642. A charge of abandonment will not lie against an entry under which there has been full compliance with law for the statutory period. 25-155

643. Under a general charge of noncompliance with law in the matter of cultivation and planting, the speculative character of the entry can not be shown. 13-90

644. Defendant has the right to insist upon a specific statement of the grounds of contest, and a retrial will be directed where both charge and notice are indefinite and due exception is taken thereto. 13-337

645. Will lie on a charge of noncompliance with law, coupled with the allegation that the pending suit of another against the entry is collusive. 11-179

646. A charge of relinquishment is not established by showing the execution of an informal relinquishment for the purpose of securing the payment of a note. 11-597

647. Charge of failure to raise more than 1,000 trees held sufficient, being made eight years after entry. 3-419

648. Case stated where the charge "wholly abandoned" is held sufficient. 3-377

649. The allegation "the land is of the class that will not produce timber" is not a good ground of. 6-578

650. A charge of failure to plant the required number of trees the third year and failure to cultivate those planted sufficient. 6-299

651. False allegation in preliminary affidavit ground for. 4-239

652. On the ground of illegal execution of preliminary affidavit is good. 14-466

653. Will lie against timber-culture entry for illegality. 2-290, 304; 3-185

654. For illegal inception may be initiated without special authority of the commissioner. 2-302; 4-239, 492

655. That an entry is held for the benefit of another is a good ground of. 6-791

656. The possessor of a relinquishment is not entitled to, but should file the relinquishment and apply to enter. 3-150

657. Will not lie against an entry after the filing of a relinquishment. 2-304, 327

658. Will not lie against an entry not of record in the local office and under which no right was ever asserted and where the land was subsequently in good faith entered by another. 10-59

659. A charge of noncompliance with law made prior to the expiration of the first year after entry is premature. 4-241; 10-268

660. An allegation of noncompliance with law will not lie when made prior to the expiration of the year in which it is alleged to have occurred. 7-452; 9-148; 28-245

661. Affidavit must be executed after the expiration of the year in which the failure is charged. 2-249

662. May be entertained, though affidavit was filed before the expiration of the period covered by the charge, where the notice was served after such period. 6-299

663. Entry perfected July 5, 1882, contest filed July 5, 1884, charging failure to break requisite 10 acres: Held, not premature nor in abridgment of entryman's defense. 6-795

664. Where the charge practically covers the year and the usual planting seasons, and the notice is served and the hearing had after expiration of the year, evidence should not be excluded as to said year because it had not quite terminated at the date of filing contest. 21-191

665. Not premature when the day set for hearing is subsequent to expiration of the year in which the default is charged, and the notice is not served until after the expiration of said year. 13-258

666. Begun prior to the expiration of the year in which the default is charged should not be dismissed prior to the day fixed for hearing and without notice to the contestant. 13-124

667. An extension of time under section 2, act of June 14, 1878, does not during its existence protect the entry from. 9-350; 10-302

668. A stranger to the record can not be heard to allege that a contest is premature. 10-108

669. Should charge continuance of default alleged. 2-301;

4-84; 10-593; 20-275

670. An allegation as to the existence and continuance of default is sufficient if such default is alleged to exist at the time the affidavit of contest is made. 6-530

671. Affidavit must show continuance of default alleged; but leave to amend may be given where the complaint is defective in this particular. 10-181

672. A charge that no part of the first 5 acres was cultivated the fourth year and that there has been no cultivation of any portion of the tract is equivalent to an allegation that the default continues. 9-644

673. Resting on specific charge as to one year does not include previous years. 5-329

674. Alleging abandonment for the year next preceding and failure to cultivate as required and to break 5 acres, is sufficient. 2-220

675. Will not lie when default is cured prior to initiation of suit. 1-142, 146; 2-262, 302; 4-368, 494; 6-825; 7-440; 10-591

676. Will be dismissed where default is cured prior to contest, and the entryman, if he continue to comply with the law, will be entitled to commute under the act of March 3, 1891. 29-641

677. Must fail if the entryman, prior to initiation thereof, commences in good faith to cure the default. 2-263; 9-644; 10-232, 373

678. Must fail if the default charged is cured before service of notice. 8-552; 11-5

679. Good faith an important element in considering evidence as to compliance with law between the dates of filing affidavit of contest and service of notice. 8-552

680. An attempt to cure a default before service of notice can not be accepted as evidence of good faith if such action is induced by the impending contest. 9-289; 12-403

681. Should be dismissed when the default charged was not due to the neglect or bad faith of the entryman and was cured on the day that notice issued for publication. 7-8

682. Actual knowledge of an impending, will not prejudice the claimant if his subsequent compliance with the law is in pursuance of a previous *bona fide* intent. 11-5

683. Must fail where the defendant cures his default prior to legal service of notice, and it does not appear that the compliance with law was induced by knowledge of the impending suit. 21-335

684. Acts performed after initiation of, but prior to service of notice, may be accepted as indicative of good faith if not induced by actual notice of the pending suit. 11-189; 12-568

685. Acts performed after initiation of, will not relieve the entryman from the effect of a default existing at date of contest. 11-423

686. If good faith is apparent, failure to fully comply with the law may be excused where such failure is the result of a mistake and an effort is made to cure the default prior to the initiation of. 11-252

687. The entryman's good faith may be properly considered. 6-755; 7-331, 365, 440, 441, 468

688. Charging speculative entry should clearly demonstrate the fact to warrant cancellation, especially when brought after years of labor upon the land. 6-610

689. Should not be sustained unless substantial noncompliance is shown under a specific charge. 9-148; 17-504

690. Clear preponderance of evidence required to warrant judgment of forfeiture. 1-129, 153; 6-660; 7-373

691. Judgment of cancellation not warranted if the specific charge, as laid in the affidavit of contest and notice, is not sustained by the evidence. 16-380

692. Failing on the issue joined, the contestant will not be heard to say that the entryman can not show compliance with the law in the statutory period. 2-305; 10-232

693. If the specific allegations fail for want of evidence, advantage can not be taken, under a general charge of noncompliance, of evidence showing a default not specifically charged. In such a case the issue is between the entryman and the Government. 7-408

694. The acts or omissions of the entryman after initiation of the contest do not affect the contestant's rights. 2-280

695. On the ground that the land is not "devoid of timber," must fail if the entry was allowed in accordance with the rulings then in force. 5-261; 6-225; 7-75; 8-534; 9-95; 10-190; 25-65

696. Proof of an offer to sell does not in itself justify a conclusion that the entry was not made in good faith. 10-20

697. Proof of an offer to sell and conditional acceptance thereof will not authorize cancellation. 9-609

698. Evidence showing contract of sale, made after three years' compliance with law, does not establish the charge that the entry was made with speculative intent. 9-327

699. Execution of power of attorney containing, among other things, authority to sell, is not sufficient to warrant cancellation. 7-493

700. Proof of sale and removal from the land of a small quantity of stone will not warrant cancellation. 10-20

701. The right of, on the ground of non-compliance with law is not defeated by showing that contestant was employed to do the necessary work, if it appears a special contract was made that said work was to be paid for in advance, and was not performed for the reason that the payment was not made as stipulated. 22-480

702. Contestant can not be heard to complain of entryman's failure to comply with the law, if such failure is the result of the wrongful act of the contestant. 10-318, 585; 21-177

703. Contestant is estopped from charging noncompliance with law where he, as agent, had undertaken to fulfil the requirements of the law. 4-205; 7-24; 16-365

704. Charges of noncompliance with law must fail if it is shown that the alleged failure was due to the illegal and adverse possession of another. 10-57

705. Noncompliance with law may be excused where due to threats of personal violence, but the showing should disclose reasonable grounds to fear personal injury. 14-65

706. Failure to break or cultivate the first year does not warrant cancellation where a former entryman has left the land in a condition of cultivation to be utilized in compliance with law. 1-137; 3-482; 4-175, 543; 10-322; 15-9

707. Failure to break the full amount required the first year does not necessarily call for cancellation if good faith is manifest. 6-829; 7-365, 441

708. Cancellation not warranted by failure to break the requisite number of acres where the entryman supposed he had complied with the law and made good the deficiency as soon as discovered. 9-180

709. Failure to break the requisite acreage within the statutory period may be excused where it is not the result of negligence and the default is in good faith cured as soon as possible, though not till after the initiation of. 10-153

710. That part of the breaking, through mistake, is not on the land entered does not call for cancellation. 10-585

711. Slight deficiency in acreage will not justify cancellation where a greater number of trees are growing on the land than is required on the statutory 10 acres at final proof. 9-567

712. Failure to plant the full acreage or secure the requisite growth of trees does not necessarily call for cancellation where good faith is manifest. 13-254

713. Failure to secure a growth of trees, if not due to negligence, does not call for cancellation. 10-591; 12-502; 13-90; 14-423; 19-172, 499

714. Charging failure to plant the requisite acreage within the statutory period must fail if such default is solely due to the unusual inclemency of the weather. 10-470

715. Must be dismissed although the requisite number of trees are not shown where the entryman has for a number of years complied with the law in good faith and the default is not attributable to negligence. 7-27

716. Failure to secure the requisite growth of trees calls for cancellation where the absence of good faith in the matter of planting and cultivation is apparent. 26-690

717. Failure to secure the required growth within the statutory period casts

upon defendant the burden of showing that such failure was without fault on his part. 7-47, 63

718. Where the rights of a third party are not involved the Government will not insist on forfeiture unless bad faith is shown. 7-89; 10-107

719. Based on a charge of noncompliance with law may be defended by an intervening entryman claiming under a relinquishment. 10-302

720. Partial compliance with law being shown, the entryman may amend his entry, retaining such portions as he is entitled to by his said compliance, the contestant taking the remainder by virtue of his preference right. (See 13-459.) 6-689

721. In a, on the ground of failure to plant the acreage required by law, the entryman may, prior to trial, relinquish part of his entry and retain remainder, if his compliance with law is such as to entitle him to patent for the unrelinquished tract. 31-137

722. One who alleges and proves a substantial failure on the part of the entryman to comply with any statutory requirement is entitled to a judgment of cancellation as against the entire entry. 13-459

723. No defense to a charge of noncompliance with law that the entry was included within a swamp selection. 19-484

724. No defense to a charge of noncompliance with law that the land would not grow trees without irrigation, and that such treatment of the land was not practicable. 8-511; 16-115; 19-493

725. Plea of sickness not a good defense against a charge of noncompliance with law if claimant was in default at the time he was disabled for further compliance. 10-352

726. Cancellation warranted where, after six years, no trees are growing on the land and no excuse is offered for such failure. 7-61

727. Not a good defense that the default was the result of the negligence of entryman's agent. 1-120;

4-493; 7-63; 10-341; 11-161

728. Proof of "plowing" is an answer to the charge of failure to "break." 6-669

729. An entryman may declare his intentions, make timber-culture entry, and absent himself from the country for two years or more without forfeiting the entry, provided he returns and the law is complied with. 2-251

730. Against an entry that appears of record through failure of the local office to act upon the relinquishment thereof must fail where the party filing such relinquishment has thereafter complied with the law in the belief that his entry of the land has been allowed, and the contestant begins proceedings with full knowledge of the facts. 11-592

731. For failure to break the requisite 5 acres the first year must fail where it appears that through error of the local office in describing the land the breaking was done on an adjacent tract. 13-116

732. Charging noncompliance must fail where it appears the requisite acts of cultivation were performed in good faith prior to the time fixed therefor and that the result of such course was not injurious to the growth of the trees. 4-175; 15-591

733. Against an entry for invalidity because made by an employee of the Land Department must fail, where the entry was allowed under express ruling of the commissioner, and the entryman afterwards complied with the law and was not in Government employ at the time of the contest. (See 2-314.) 17-85

734. A charge of failure to submit final proof within the statutory life of the entry must fail where it appears that under the extension of time authorized by the act of May 20, 1876, the entryman is not in default. 21-315

735. A charge of failure to submit final proof within the statutory period will not defeat equitable action on the entry if such failure is satisfactorily explained. 25-501

736. Right to proceed with pending, not defeated by the commutation privilege conferred by section 1, act of March 3, 1891. 19-38

737. Against an entry, initiated after the act of March 3, 1893, in which the charge is noncompliance with law, presents no cause of action, in the absence of an allegation of default on the part of

the entryman occurring during the first eight years of the entry. 26-670

XIV. Coal Land.

738. May be entertained against a coal entry, and if successful a preferred right of entry secured thereby. 12-336

XV. Timberland.

739. Will lie against an entry under the act of June 3, 1878, with a preferred right to the contestant if successful. 17-151

740. The allowance of an application to contest a timber and stone entry is within the discretion of the Commissioner of the General Land Office, and not a matter of right granted by law; and where the applicant seeks to contest such an entry on the ground of underappraisement of the land, the commissioner may, in his discretion, reject the application and direct a reappraisement. 39-433

CONTESTANT.

See APPLICATION, IX; CONTEST; PRACTICE, VI, IX, g; RELINQUISHMENT, 88-90, 97, 104, 127-162.

I. Generally.

II. Preference Right.

I. Generally.

1. Right of, first regulated by the act of May 14, 1880. 1-76; 2-60

2. An alien is not disqualified to initiate contest proceedings against an entry. 17-503, 530

3. Qualifications as an entryman not requisite. 3-18;

4-185; 5-259, 296; 11-575; 22-205

4. Validity of contest not affected by the fact that the contestant is a minor. 16-403

5. The qualifications of, are not material until such time as he may apply to exercise the preferred right of entry accorded the successful contestant. 19-106

6. In a contest wherein the, alleges a superior right in himself to the land it is incumbent upon him to establish his qualifications as an entryman. 23-472

7. A tenant at will of a homesteader is not, by reason of such relation to the entryman, precluded from contesting his entry. 22-581

8. The right of a party to be heard as a, against an entry, and applicant for the land covered thereby, will not be recognized where it appears that he is at the same time the attorney of another claimant for the same tract. 22-86

9. Generally must be a party in interest. 2-219

10. A guardian of the minor children of a deceased soldier may institute a contest on behalf of his wards, and exercise the preference right by filing a soldier's declaratory statement for said minor children; and this right will not be defeated by the failure of the guardian to set forth in the affidavit of contest the capacity in which he was then acting. 24-472

11. Party without interest may institute contest against forfeited or abandoned homestead or timber-culture claims, but not against preemptions. 2-219

12. Distinction between "protestant" and. 6-763

13. A "protestant" does not become a, by filing an affidavit of contest, in the absence of official action thereon. 15-23

14. One who prefers charges against an entry, furnishes evidence in support thereof, and pays the cost of his own testimony, is a contestant, though he may formally waive the statutory preference right. 13-722

15. A stipulation that a hearing ordered on a protest shall be treated as a contest, will not give the protestant the rights of a contestant, if he has not brought himself within the rules regulating the initiation and prosecution of a contest. 19-442

16. An order for a hearing, based on an affidavit accompanying an appeal from the rejection of an application to enter does not confer the status of a contestant upon the applicant. 19-442

17. That a party styles his proceeding against a homestead at the time of final proof a "protest" will not defeat his right as a, where he files at such time a corroborated charge, pays the costs, and claims a preferred right; nor can the en-

tryman in such case defeat said proceedings by the withdrawal of his final proof.

20-342

18. A protest filed by a third party, during the pendency of a contest, setting up his own claims to the tract, and protesting against the recognition of any claims save his own in the event of the cancellation of the subsisting entry does not confer upon said party the status of a, nor any right as against one claiming under a subsequent relinquishment.

20-147

19. One who appears at the time fixed for the submission of preemption final proof and files a definite charge, in due form, against the alleged right of entry on the part of the preemptor, pays the costs of the proceedings, and secures a favorable judgment, is entitled to the status of a successful contestant under the act of May 14, 1880.

20-325

20. Must pay the fees of the Land Office in the proceedings instituted to secure cancellation in order to acquire a preference right.

14-299, 646;

20-153; 22-419

21. Who, after submission of his own testimony, declines to pay the further costs of the case is without interest in the controversy, and has no standing to complain of the refusal of the local officers to recognize him in the subsequent proceedings.

22-462

22. Who desires to maintain his status as such must pay the expenses of a rehearing.

16-481

23. On failure of, to pay the costs the case may thereafter be treated as between the entryman and the Government.

26-210

24. A successful, who tenders all the fees required of him by the local officers at the time he applies to enter, loses no right that can be taken advantage of by an intervening entryman if the amount of the tender is less than the legal fees.

16-514

25. An actual tender of the fees prescribed on the allowance of an entry, is not required of a successful, who applies to exercise his preferred right in the presence of an intervening adverse entry of record.

18-75

26. Protestant, by complying with the law and regulations, can secure the rights of a.

6-763

27. Can not transfer right of contest.

1-76

28. Motive of, in attacking entry not material to defense.

5-296

29. Right of the, dependent upon the successful issue of the contest.

5-248; 8-139, 357

30. Right of, dependent on status of land at date of contest.

9-461

31. Right of the successful, rests upon the judgment and not upon the clerical act of cancellation.

4-248

32. Is not entitled to a preference right unless the cancellation or relinquishment of the entry is the result of the contest.

12-25

33. Is not entitled to a judgment of cancellation unless he shows a substantial noncompliance with law in a matter specifically alleged.

9-148

34. Right of the, must depend on his ability to sustain the charge, when the entry is canceled on intervening relinquishment not the result of the contest.

7-442

35. The right of, to be heard will not be defeated by a hearing inadvertently ordered on a later contest.

22-91

36. Right of, not affected by the failure of the local office to act upon the application to contest.

9-18

37. Right of, not defeated by a fraudulent intervening contest.

9-314

38. Right of, not defeated by intervening claims.

9-269

39. The first in time is entitled to the first process and hearing, and if, for any cause, he fails to sustain his charges, the second is then entitled to be heard.

19-501

40. Right of second, relates back to the date of filing contest affidavit.

4-506; 6-530

41. Right of second, can not be defeated by curing the default charged after contest is filed and pending the disposition of a prior fraudulent and collusive contest.

6-530

42. The right of second, abates on the filing of a relinquishment in the pending suit.

20-3

43. Entry made by a, on a relinquishment, during the pendency of a second contest charging disqualification of the original entryman and collusion with the first contestant, permitted to stand, where the allegations in said contest are not supported by the evidence. 29-211

44. Where a contest entry is relinquished after the contest has been dismissed for want of prosecution, and while a second contest is pending, the second contestant is entitled to a preference right of entry. 35-527

45. Regulations of June 1, 1909, with respect to preference right where there are two contests and relinquishment is filed. 38-23

46. Regulations of September 15, 1910, respecting rights of junior and senior contestants in case of relinquishment. 39-217

47. Second, can not question, collaterally, the sufficiency of the evidence on which a judgment of cancellation was rendered in the prior contest against the same entry. 7-400; 19-488

48. Withdrawal of, will not prevent action of the department on the evidence. 5-40, 385; 12-495

49. Waiving his rights leaves the case as between the entryman and the Government. 3-408

50. Personal attendance of, at hearing presumptively essential, and claimant can not take advantage of his absence where it was due to the fault of claimant. 7-60

51. Can acquire no right whatever by the presentation of an application to enter prior to termination of the contest and while the entry remains of record. 35-254

52. Circular instructions of the Land Department (that entry on land in the possession of a settler is invalid) in force at initiation of a contest, though subsequently revoked, protect the contestant. 2-66

53. Right of, as against one claiming under a subsequent relinquishment attaches as of the date when the affidavit of contest is filed if the charge therein is sustained. 15-413

54. Takes nothing under a relinquishment that is not the result of his suit. In

such case his rights depend on the establishment of his charge against the entry. 21-333; 22-71

55. Right of, to proceed against an entry not impaired by a relinquishment, accompanied by an application to enter, filed after initiation of contest. 10-256; 11-65, 525

56. No rights of, defeated by a relinquishment filed pending contest. 3-546; 9-440; 10-105, 302; 14-306; 16-329; 18-92, 108

57. The right of, to be heard on a charge of abandonment is not defeated by a subsequent relinquishment, and intervening adverse entry of a third party, even though the relinquishment is not the result of the contest. 19-175

58. Where a relinquishment is filed during the pendency of a contest, on which notice has not issued and a third party is allowed to enter the land involved, the burden is upon the, to show that the charge in said contest is well founded. 25-359

59. Rights of, not defeated by a relinquishment filed during the pendency of the contest if the evidence submitted warrants cancellation on the charge as laid by him. 13-34, 196

60. The relinquishment of a contested entry does not defeat right of, if he can show that his contest caused the cancellation of the entry. 13-437

61. Is entitled to the benefit of a relinquishment if filed as the result of a contest, though the charge is technically insufficient to warrant a hearing. 10-105; 19-8

62. Right of, not defeated by a relinquishment and the intervening entry of a third party filed during the pendency of the contest. 2-265, 283; 10-398; 16-514

63. Right of, after award of preference right, not affected by a relinquishment of the contested entry. 21-474

64. The failure of one holding a relinquishment to file the same until after the initiation of contest by another will not defeat or impair the right of contestant. 9-269

65. In case of relinquishment pending contest, entry may be made subject to the right of contestant. 3-546

66. Right of under act of May 14, 1880, is personal, and on his death the question at issue is between the Government and the entryman. 3-5;

5-369; 6-93, 755; 7-491; 8-598; 9-287

67. The right of, is personal, and the devisee of a contestant takes no right in the contest. 18-446

68. Right of, is only held personal and terminating with his death where he has no other than the preference right of a successful contestant. 8-405

69. The right to complete an entry initiated by one who contests a timber-culture entry and applies to enter the land covered thereby, but dies prior to the favorable termination of the suit, descends to the heirs. 9-161; 13-34

70. The rule that the right of, is personal and does not descend to his heirs is not applicable where contestant asserts a prior settlement right. 15-19

71. The right of a settler, with a pending application to make homestead entry, who dies before the determination of a contest instituted by him against a prior adverse entry, descends to his heirs, and may be perfected by them on the cancellation of the entry under attack; and this right is in no manner dependent upon the provisions of the act of July 26, 1892, with respect to the heirs of a. 22-300

72. The right of a settler on a tract embraced within a railroad selection, who applies to enter, accompanying his application with an affidavit of contest against the railroad selection, and thereafter dies before any action is taken, descends to his heirs, and may be perfected by them on the elimination of the selection. 27-621

73. Act of May 14, 1880, amended, so that heirs of a deceased contestant may proceed with the suit. Circular of January 9, 1893. 16-34

74. Under section 2, act of July 26, 1892, the heirs, if citizens of the United States, are entitled to continue the prosecution of a contest in the event of the contestant's death before the final termination of the suit. 17-402

75. On successful termination of contest after death of contestant, the person seeking to enter in exercise of the preference right, under act of July 26, 1892, is required to show merely that he is heir of the

deceased contestant, a citizen of the United States, and that contestant was a qualified entryman at the time of his death. 33-465

76. The heirs of a successful contestant against a homestead entry, who make entry in the exercise of the preference right, stand in the place of the deceased contestant, with the same rights and privileges and burdened with the same duties and obligations relative to compliance with law in the matters of residence and cultivation. 36-26

77. Under the act of July 26, 1892, the heirs of a deceased contestant are entitled to the same rights that contestant would have been entitled to if his death had not occurred, and where at the time of his death he was disqualified to make entry by reason of being an alien and not having declared his intention to become a citizen, no rights exist to which his heirs can succeed. 36-168

78. Under the act of July 26, 1892, the heirs of a deceased contestant, qualified under the law, succeed to the same rights that contestant would have had had his death not occurred, and burdened with the same duties and obligations as to residence, cultivation, and improvement, upon making entry in exercise of the preference right, as would have rested upon contestant had he himself exercised the right; but the heirs have no authority to assign the right or to delegate another to perform for them the duties and obligations required by the homestead law. 40-608

79. Where one of several heirs of a deceased contestant makes entry, in the exercise of the preference right, for and in behalf of all the heirs, a contest against such entry must make all the heirs parties, and notice must be served upon each and all of them. 37-601

80. The act of July 26, 1892, providing that the heirs may proceed with the contest, is not applicable where the contestant dies prior to said act. 16-340; 18-446

81. Contestant's failure to file affidavit as to qualification can not be set up for the first time on appeal. 3-513

82. Rights of timber culture, defined and limited by the act of June 14, 1878. 1-160

83. Right of timber-culture, who applies to enter depends upon establishment of default alleged. 8-357

84. Of timber-culture entry may acquire a preference right under the act of May 14, 1880, though no application to enter is filed with the contest. 7-9; 10-398

85. Successful, must make affidavit that he has not exhausted his right since filing application before his entry will be allowed. 3-360

86. Requiring the successful contestant of a timber-culture entry to file a supplemental affidavit as to his qualification to enter will not impair rights under his application filed at the initiation of the suit. 7-330

87. Of timber-culture entry can not insist on forfeiture of entire entry where only partial failure is shown and bad faith does not exist. (See 13-459.) 6-689, 829

88. Of timber-culture entry estopped from setting up want of cultivation where he had charge of the land for that purpose. 4-205

89. Can not take advantage of evidence showing a default not specifically charged where the specific charges have failed. 7-89, 408

90. Who has obtained a judgment of cancellation as to part of an entry may waive the preference right thus secured and attack the entry in its entirety, or exercise such right and then proceed against the remainder of said entry. 13-271

91. After an entry has been regularly canceled as result of a contest, the entryman has no interest in the land that entitles him to be heard with respect to contestant's right of entry. 38-335

II. Preference Right.

See HOMESTEAD, IX.

92. One who contests an entry and secures the cancellation thereof is entitled to a preferred right of entry. 13-113

93. The preferred right of, is not a vested right until he has "contested, paid the land-office fees, and procured the cancellation" of the entry. 31-137

93a. Is in the nature of a reward to an informer and is not earned until the entry

is canceled as the result of the information furnished. 36-80

94. Is in the nature of a reward to an informer, and to entitle a contestant to claim the benefits, it must appear that he has not only contested an entry and paid the land office fees, but that he has "procured the cancellation" of the entry. 37-513

95. No preference right of entry accrues as result of a contest until final judgment of cancellation has been rendered; and in exercise of such right the contestant is bound by the regulations in force at the time his application is filed. 39-449

96. It is offered as the only adequate means of protecting the United States against illegal acquisition of public lands, and it is the duty of the Land Department to encourage the policy. 2-260

97. Is akin to the law granting to the informer a moiety of the penalty in criminal cases; by acceptance of the information contestant acquires the right to furnish the proofs and obtain the reward. 2-61, 167

98. In a hearing between two settlers to test a question of priority, a "preference right of entry" is not acquired. 11-251

99. Who alleges death of entryman, and that he left no heirs competent to inherit his rights, and secures cancellation of the entry on proof of such allegations, is entitled to a preferred right of entry. 28-136

100. The act of May 14, 1880, does not confer a vested right to enter, but merely a preferred right for 30 days as against everyone except the United States. 37-450

101. Who holds a relinquishment and brings a contest, charging the fact of relinquishment, acquires no preferred right, if he subsequently files the relinquishment and the entry is canceled. 18-358

102. Where at the time of initiation of a contest contestant has a relinquishment in his possession or under his control, it can not, upon being subsequently filed, be treated as a result of the contest, so as to give contestant any rights as against a settler. 38-381

103. Who, pending his contest, purchases a relinquishment of the entry and files the

same does not thereby acquire the status of a successful, and the right of a settler, who is then residing on the land, will take effect at once on the filing of the relinquishment and exclude the claim of the contestant. 17-412

104. Preferred right is not secured by the purchase of a relinquishment. 15-441

105. Acquired by successful attack for fraud or illegality. 4-370, 461

106. One who successfully contests a desert entry is entitled to a preference right. 3-69;

5-694, 712; 6-1, 572;

7-186; 15-320; 19-382

107. A settlement claim, on unsurveyed land subsequently included in the desert entry of another, will defeat the preference right of one who successfully attacks said entry, if duly asserted on survey of the land. 27-594

108. A preemptor who contests and secures the cancellation of a prior desert entry in conflict with his filing, and thereupon perfects his preemption claim, exhausts thereby his preferred right and has no claim as a successful contestant against the remainder of the tract covered by the contested entry. 17-119

109. By contesting and procuring the cancellation of a desert entry made under the act of March 3, 1877, as amended by the act of March 3, 1891, the contestant acquires a preference right. 32-418

110. By a successful contest against a desert entry the contestant does not acquire such a preference right as will, prior to its exercise, except the land from the operation of a withdrawal under the reclamation act. 32-396

111. Where before a successful contestant exercises his preference right the land is withdrawn under the reclamation act, and the withdrawal subsequently revoked, such right may be exercised any time within 30 days after restoration of the land to entry. 36-499

112. Where land embraced in a homestead entry was withdrawn for use in connection with a reclamation project pending a contest which resulted in cancellation of the entry, the successful contestant, upon restoration of the land, is entitled to a period of 30 days from the date of such

restoration within which to exercise his preference right of entry. 40-607

113. A successful contestant of an entry within a reclamation project will be required, in making entry in exercise of his preference right, to pay the building charge obtaining at the time his application is filed, and is not entitled to the rate in effect when the former entry was made nor to credit for the payments made by the former entryman. 40-458

114. Whatever preferred right may exist on cancellation of the entry is defeated by an intervening proclamation declaring the establishment of a forest reservation including the land. 19-489; 30-6

115. Where after cancellation of an entry as the result of a contest, but prior to exercise by contestant of his preferred right, the land is withdrawn for inclusion within a national forest, the preference right is thereby defeated. 37-450

116. Section 2, act of March 3, 1911, protecting the preference rights of successful contestants where the lands embraced in the contested entries have been included in national forest withdrawals, applies to all contests initiated under the act of May 14, 1880, prior to the withdrawal, where cancellation of the entry results therefrom, regardless of whether cancellation was procured prior or subsequent to the withdrawal. 39-611

117. The successful termination of a homestead contest on any charge affecting the legality of the claim secures the right conferred by the act of May 14, 1880. 9-209

118. Of an entry under the timber and stone act acquires a preferred right if successful. 17-151

119. An application to purchase under the act of June 3, 1878, is not an "entry" within the meaning of section 2 of the act of May 14, 1880, and one who successfully contests such an application is not entitled to the preference right. 33-655; 34-377

120. The mere tender, by an applicant under the timber and stone act, of the required proof, purchase price and fees, which are properly refused, is not an "entry," within the meaning of the act of May 14, 1880, according a preference right to one who contests and procures the cancellation of an entry. 34-371

121. May be properly awarded to one who has made application to contest, at his own expense, a coal entry, and furnishes information which leads to the cancellation of said entry on proceedings subsequently instituted by the Land Department. 12-336

122. Accorded a successful contestant by the act of May 14, 1880, may properly extend to an agricultural claimant who contests a mineral claim and clears the record thereof. 16-8; 19-184

123. Of a scrip location is entitled to preference right of entry if successful. 14-523; 25-92

124. May be secured by contest against an entry of Kansas Indian trust land. 9-329

125. Not secured by contest against Indian allotment. 29-68; 31-343

126. There is no statutory right of contest against a forest lieu selection under the act of June 4, 1897, and no preference right of entry accrues upon cancellation of such a selection as result of a contest. 40-197, 231

127. Not secured through contest against a preemption filing. 2-581; 9-92; 12-639

128. Not secured by proceedings on protest against an application to enter. 29-168

129. Acquired by successful attack upon swamp selection. 4-497; 14-658

130. May be secured as to land finally excluded from an entry allowed for more than 160 acres and contested for such irregularity. 8-205

131. Is not accorded for successful contest against timber-culture entry for illegality. 1-421

132. One who contests successfully an illegal timber-culture entry acquires a preferred right of entry. 2-290, 304; 3-185

133. Without the right of contest under the timber-culture law there can be no preference right acquired. 1-626

134. Contestant against timber-culture entry has a preferred right of entry under section 2, act of May 14, 1880. 2-323

135. Attaches where contestant (timber culture) has proved the charge, though he failed to file application for the land. 2-307, 319

136. Timber-culture contestant who seeks to take the land as a preemptor acquires no right. (Overruled, 5-591.) 2-293

137. Is personal and can not be transferred. 1-42, 76, 487; 7-186, 491; 10-560; 36-80; 39-449

138. Is a mere privilege, which contestant may at any time waive. 2-41, 257, 323; 4-535

139. Is personal, and if transferred, the transferee acquires no right that he can assert as against the intervening entry of another. 15-394

140. Conceding that one who furnishes evidence on which a patent is set aside is equitably entitled to a preferred right of entry, there is no authority for recognizing such equity as the subject of transfer. 29-178

141. The preference right is personal and can not be assigned or waived in favor of another, and where, during the period allowed within which to exercise such right, the contestant applies to select the land, in the name of and as the attorney in fact for another, under the act of June 4, 1897, without making application in his own behalf during such period, he thereby waives his right, and the land becomes subject to entry by the first legal applicant. 32-466

142. A successful contestant may procure a forest lieu selection to be made in his interest by one entitled to make such selection, and all rights under such selection will inure to the contestant. 36-41

143. The preferred right can not be defeated by the prior settlement of a third party who fails to assert his claim in the contest proceedings. 25-289

144. A settlement on land covered by the entry of another confers no right as against a successful, who secures the cancellation of such entry. 24-432

145. The preferred right is not defeated or impaired by adverse settlement claims acquired subsequent to the entry under attack. 24-221; 26-31

146. The preferred right of a successful contestant can not be defeated by a claim of adverse settlement initiated by the entryman subsequently to initiation of the contest. 38-335

147. While a homesteader whose entry is canceled as result of contest can not by

settlement and application to make second homestead entry of the land defeat the preference right of the successful contestant, yet where the contestant has transferred all his right and interest in the land, the right of the entryman under his settlement and application is superior to and will defeat an attempted location of soldiers' additional right in the name of the contestant but in fact in the interest and for the benefit of the transferee.

39-465

148. A settlement made subject to the right of a successful, defeats the subsequent entry of a third party who files a waiver of the contestant's preferred right.

15-443

149. Waiver of, confers no right upon a third party as against the original entryman.

7-381

150. May be waived, and after such waiver the land is subject to entry by the first qualified applicant.

5-293; 10-560

151. The right of the successful contestant to waive is one with which the Government has no concern.

3-560

152. Who, during the trial, waives his preferred right, is no longer a party in interest; and the case is thereafter a matter between the entryman and the Government.

29-606

153. If sold, may be filed without specific authority therefor from the contestant.

5-294

154. Where waived by an amicable and executed agreement with a third person whose entry has been allowed pending the contest the entries thereunder may be allowed to stand.

2-257

155. Will not be held forfeited on a charge that contestant has sold such right to another, where the contract of sale, if made, was not carried into effect, and contestant promptly applied to exercise his right.

18-330

156. General allegations in a protest filed with a view to defeating contestant's preference right, tending to show a speculative intent and immoral practice in other contests by the same contestant, are not sufficient to bring into question his preference right in a case wherein his conduct is unimpeached.

34-376

157. Questions as to preference right can only arise on application to exercise

such right, and should not be decided prior thereto.

4-393;

6-236; 9-391; 12-157; 14-587;

15-415; 21-461; 22-22, 205; 25-489

158. The rule that the question of preference right will be deferred until application for its exercise, is not applicable where the record discloses that contestant is disqualified as an entryman, or is estopped from entering the land as against the adverse claim of another.

27-30

159. Under the act of May 14, 1880, is not secured unless the cancellation of entry is caused by the contest.

9-193, 211

160. Dependent upon ability to establish the charge against the entry.

1-104; 7-46; 9-440

161. Awarded without respect to the allegations on which the contest was initiated.

1-145

162. The right is not dependent upon the truth of the charge as laid, if the cancellation of the entry is the result of a contest prosecuted in good faith.

24-221

163. Under the supervisory authority of the department a preference right may be accorded a party through whose efforts an entry is canceled, though he may not be entitled to be heard as a, against such entry.

23-514

164. Will not be affected by contestant's former relation to the land.

4-19

165. None attaches where contest has been improperly brought.

2-285

166. Not dependent upon intention to use the same when bringing suit.

5-360

167. No preference right acquired if the contest is not begun and prosecuted in good faith to acquire title to the land.

11-5

168. Not secured through a speculative or fraudulent contest.

5-358;

6-164, 288; 8-248; 9-491; 10-250;

13-132, 493, 17-180; 19-426

169. Can not be secured through a contest prosecuted in the name of another.

7-186

170. Will not be permitted to take advantage of his own wrong and thus secure a preference right of entry.

9-177

171. Not defeated because the entry was canceled on record evidence.

4-461,

517; 5-404

172. Who files an affidavit of contest subject to the prior contests of two others

is not entitled to a preferred right where he makes no charge against said contests and the cancellation of the entry is not the result of his suit. 15-375

173. Under a second contest suspended to await disposition of a prior contest against the same entry, the second contestant, upon relinquishment of the entry after dismissal of the first contest for want of prosecution, is entitled to a preference right of entry, regardless of the fact that the first contestant was allowed 30 days within which to apply for reinstatement of his contest and within that period filed the entryman's relinquishment accompanied by his application to enter. 37-217

174. Where a contest is filed in collusion with an entryman for the sole purpose of gaining time to sell a relinquishment and obstruct a possible later contest, and prior to the consummation of the collusive scheme a second contest is filed charging such collusion and the entryman's failure to comply with law, and at a hearing duly had after notice to all parties the allegations of the second contest are sustained, the second contestant is entitled to a preference right of entry, notwithstanding a prior application to enter filed on relinquishment of the entry under attack and with knowledge of the second contest. (See 37-560.) 37-460

175. The preference right, in a case where the senior contestant withdraws his contest, will, as between two junior contestants, be awarded to the junior-junior contestant who successfully prosecutes his contest, where the senior-junior contestant was afforded an opportunity to prosecute his contest but failed to do so. 36-80

176. Where a second contestant charges failure on the part of the entryman to comply with law and also collusion between the entryman and the first contestant, and the entry is canceled as the result of the first contest, the second contestant is not entitled to a preference right, notwithstanding he establishes collusion as charged and the first contestant is held for that reason to have acquired no preference right. (See 37-560.) 35-18

177. A second contestant is not entitled to a preference right where the entry is canceled as a result of the first contest,

even though the first contestant may not be entitled to such right. 36-445

178. A second, whose application to contest is held pending the disposition of a prior suit on the same ground, acquires no preference right if the entry is canceled as the result of a hearing ordered to determine all conflicting claims. 15-324

179. A second, who files an affidavit of contest secures no preference right if the entry is canceled on the prior contest. 13-696

180. Preference right not defeated by a hearing inadvertently ordered on the subsequent contest of another. 12-318

181. Not secured by one who simply avails himself of action already taken by the Government. 6-833

182. Not secured by furnishing information as basis for special agent's report. 6-828

183. Not secured by a contest filed during the pendency of Government proceedings if the entry is canceled as the result of such proceedings. 9-211, 569; 12-25

184. Not acquired by the filing of a contest against an indemnity school land selection, where cancellation of the selection is due to proceedings instituted by the Government in its own interest prior to initiation of the attempted contest. 33-595

185. One admitted as *amicus curiae* is entitled to a preferred right of entry under the act of May 14, 1880, if he procures a cancellation. 3-21

186. Preference right not defeated by the cancellation of the contested entry on subsequent proceedings by the Government where prior thereto the contestant had submitted testimony sufficient to secure cancellation and obtained the favorable judgment of the local office thereon. 12-285

187. Preference right not defeated though the entry is canceled on the subsequent contest of another, where said contest is allowed to proceed subject to rights secured under the first. 14-373

188. One who fails to appeal from a decision of the local office dismissing his contest is not entitled to, in the event the entry under contest is canceled on the evidence submitted. 10-584; 11-328, 416

189. The failure of a, to appeal from the rejection of his application to enter, filed on relinquishment of the entry, will not defeat his preferred right, as against an intervening entryman, who is prosecuting a contest, involving the same tract, in which the disqualification of said contestant is charged but not proven. 19-425

190. Not defeated by a charge of having attempted to mislead the local office where the charge was ignored by that office. 6-342

191. The request of, for the dismissal of the contest will not defeat his preference right thereunder where he subsequently, in good faith, prosecutes the same to a successful conclusion. 12-265

192. Right of successful contestant against timber-culture entry not affected by possession of the defaulting entryman. 4-508

193. Can not be questioned by the defeated party after his entry is regularly canceled. 12-32

194. Can not secure a preferred right by settlement on the land prior to the cancellation of the entry under attack. 18-358

195. Not secured by breaking 5 acres of land while it is covered by the uncanceled timber-culture entry of another. 7-352

196. Does not entitle the contestant to make private entry of a tract not subject thereto. 8-282

197. Can not be exercised on lands reported valuable for coal prior to the act of March 3, 1883, and not thereafter offered. 10-140

198. Can not be defeated by purchase under the act of June 15, 1880, made pending contest. 11-164; 4-580; 5-230, 608; 6-446, 641; 7-381, 500; 8-463, 579, 595; 9-18; 10-111, 410, 678; 16-183

199. Who applies to exercise a preference right must show his qualifications as an entryman at such time. 4-203; 14-523

200. May be secured through contest against a homestead entry by alien if qualified when the entry is canceled and he applies to exercise the right. 5-259; 17-530

201. Can not be asserted by one who has disqualified himself to make entry prior to the final disposition of the contest. 7-542

202. A preferred right of homestead entry can not be secured through a contest instituted by a single woman, if she marries prior to the exercise of said right. 29-297

203. The right of a successful, to exercise the preferred right accorded by the act of May 14, 1880, must be determined by his qualifications to make entry at the time he applies therefor, irrespective of his qualifications prior thereto. 25-311

204. The preferred right given by the act of May 14, 1880, can not be held to extend to one, who, under another statutory enactment, is disqualified and prohibited from entering the land involved. 26-34

205. Not defeated by the allowance of an intervening entry subject to the contestant's preferred right. 18-504

206. On the successful termination of a contest the land should be reserved for the benefit of the, during the period accorded for exercise of the preferred right. 15-424; 16-334; 20-233

207. Departmental instructions of March 30, 1893, with respect to the reservation of land covered by a canceled entry, for the exercise of the preferred right, are only applicable to contests prosecuted under the act of May 14, 1880. 19-547

208. In the case of a departmental decision rendered prior to the change of practice, following the decision in *Allen v. Price*, but wherein notice of such decision is not given until after such change of practice, the, is entitled to the protection provided for under the new practice. 24-477

209. Does not operate to reserve the land during the period allowed for the exercise of such right. 1-162, 486

210. An entry made pending a preferred right which the contestant relinquished while the question was on appeal is allowed to stand. 2-323

211. The existence of, does not bar an application, which should be received subject to the preferred right. 2-276, 321

212. Should not be exercised in the presence of an intervening entry until after due action had on notice to the intervening entryman to show cause why his entry should not be canceled. 6-643; 9-491; 10-18, 41

213. Where the record shows an intervening entry made after expiration of, such entry should not be canceled without hearing. 6-509

214. The entry of a successful, allowed during the existence of an intervening adverse entry of the same land is illegal, and he acquires thereby no additional rights to the land. 18-446

215. In the absence of specific charges against the right of a successful, a hearing will not be directed on the application of an intervening entryman. 15-358

216. In a hearing ordered between an intervening entryman and a successful, the issue is limited to the qualifications of the, and his right to make entry. 13-35

217. On a general order to an intervening entryman to show cause why his entry should not be canceled and the preferred right of the contestant allowed, he may set up any charge involving the invalidity of said right. 10-250

218. The period within which a successful, is required to assert his preferred right, does not begin to run until he is notified of such right. 28-530

219. Where a successful contestant is notified of his preference right by registered mail, and the notice is received by him, the preference-right period begins to run from that date, excluding the day notice was received. 38-394

220. A successful, is not required to exercise his preferred right of entry until he has received due notice of the cancellation secured by his contest. 17-530

221. The preferred right will not be defeated by an intervening entry allowed without notice to contestant of his right of entry. 20-396

222. Thirty days after receipt of notice of cancellation within which to exercise the preferred right. 5-183; 7-553; 10-41; 11-474

223. Is lost by failure to use the same within the 30 days accorded by the statute. 5-115; 9-70, 478; 10-297; 11-202

224. The period of 30 days does not begin to run until the case is finally closed. 32-418

225. Contestant is entitled to the full period of 30 days after the case is finally closed and no longer open to proceedings on review or appeal, within which to assert his preference right. 34-615

226. No preference right can be asserted, in the presence of an adverse claim, by a contestant who fails to make entry within the statutory period after notice of cancellation. 11-175, 208; 21-542

227. Notice of cancellation to the successful, by unregistered letter is not sufficient. 7-335; 8-477

228. Notice of cancellation to the attorney of, is sufficient. (See 39-160.) 3-409 9-70, 478; 10-324

229. Notice of cancellation to the attorney, erroneously entered of record, is not notice to the. (See 39-160.) 6-509

230. Who fails to give his proper post-office address can not set up want of notice of the order of cancellation as against an intervening entryman who has no notice of any defect in such service. 11-574; 13-670

231. Notice of cancellation to a successful, must affirmatively appear of record to charge him with failure to exercise his preference right within the statutory period, if the absence of such notice is not due to negligence of contestant or his attorney. 18-439

233. Who resides upon and improves the land covered by the canceled entry, but fails through ignorance to enter the same within the statutory period, is not precluded from subsequently entering said land by the intervening entry of another secured through wrongful means and with notice of contestant's claim. 12-533

234. Who does not exercise his preference right within the statutory period can not assert the same thereafter in the presence of adverse claims, even though he may have believed that his entry was in fact of record and under such belief had proceeded to comply with the law. 11-208

235. Not defeated by failure to exercise within the statutory period where the delay is caused by the local office referring

the matter to the commissioner for instruction. 13-271

236. Failure to exercise within 30 days after notice will not defeat the right where the contestant is informed in said notice that his right will not be recognized on account of an intervening claim. 13-487

237. A successful, can not be held to be in default in the matter of asserting his preferred right, where he goes to the local office within the statutory period for the purpose of making entry, and is informed that his application can not be allowed on account of a pending contest. 18-567

238. A successful, will not be held to have lost his preferred right by failure to exercise within the statutory period, where his action is based on the advice of the local office as to the departmental practice then in force. 25-377

239. A successful, who fails to exercise his right within the statutory period will not be heard to plead want of notice as against an intervening claim where the notice is sent to the address given by his attorney. 11-574; 13-670

240. Where the failure of, to receive notice results from his carelessness or neglect, and other rights attach in the meantime, his preferred right is lost. 21-347

241. An intervening entry will not defeat the preferred right of a successful, who fails to receive notice of cancellation, if such failure is not due to want of diligence on his part. 23-259

242. Failure of a successful, to exercise the preference right within the statutory period can not be excused by the fact that he was imprisoned for a criminal offense during such period. 14-529

243. Failure of a local office to give notice of, does not prejudice the contestant. 2-323

245. Of contestant against homestead entry may be exercised on part of the land in contest and a contiguous tract; of contestant against a timber-culture entry is confined to land in contest, unless less than 160 acres, when an adjoining tract may be included. 2-289

246. Payment of the land-office fees is a prerequisite to the right, and will be presumed (on appeal) wherever the contrary does not appear. 2-323

247. A ruling that the contestant is not entitled to, in a decision ordering a hearing, will not bar the subsequent assertion of such right, though no appeal was taken from such decision. 8-400

248. As between two, attacking the same entry, the preferred right should be accorded the first, though the judgment of cancellation may have been rendered on evidence submitted by the second, if the same judgment is warranted by the evidence adduced under the prior contest. 25-143

249. Preferred right may be accorded the first, though the cancellation is made on the subsequent suit of another, where the first had prior thereto submitted sufficient evidence, was not in default, and the second is charged with notice of the rights of the first. 12-525

250. Should not be allowed, on filing the relinquishment of the entryman, to exercise the right of entry during the pendency of a plea in intervention setting up fraud and collusion as against the contest. 13-24

251. Upon the filing of a relinquishment of an entry against which a contest is pending, no preference right inures to the contestant where the contest is shown to be fraudulent. 36-405

252. Not earned by a collusive informer who does not act in good faith but assumes the position of an informer for the purpose of protecting the entry from attack until the entryman can sell a relinquishment. 36-80

253. Where a sufficient affidavit of contest has been filed, entry upon relinquishment of the entry under attack will not be allowed to any person other than the contestant until contestant shall have been duly notified of the filing of the relinquishment and given opportunity during the preferred-right period of 30 days to appear and offer proof that the entryman or some person or persons in privity with him in fact knew of the filing of such affidavit of contest, and that the relinquishment was induced thereby, and upon satisfactory proof that the relinquishment was the result of the contest, contestant will be entitled to the usual preference right of entry. 39-165

254. A preemptor who appeals from the rejection of his filing is not entitled to a preference right as a successful, if his appeal results, on examination of the records, in the cancellation of a prior town-site entry. 16-127

255. A contestant who secures a, prior to the repeal of the preemption law, and is at such period residing on the land with intent to preempt the same, has a claim thereto lawfully initiated, that is protected under the terms of said repeal. 20-396

256. A contestant who secures the cancellation of an entry prior to the repeal of the preemption law, but does not settle on the land until subsequent thereto, has no right that can be protected under the terms of said repeal. 20-181

257. Who fails to secure a judgment of cancellation until after the repeal of the preemption law has no right thereunder within the protection extended by the repealing act to claims "lawfully initiated." 17-149

258. Who does not apply to make timber-culture entry until after the passage of the act of March 3, 1891, can not make such entry by virtue of his preference right. 13-169; 26-474

259. Who fails to exercise his preferred right within the statutory period has no protection as against the subsequent repeal of the timber-culture law. 17-117

260. Who commences action against a homestead entry and at the same time against a timber-culture entry, and files therewith an application to enter under the timber-culture law, is bound thereby as against one who subsequently settles on the homestead tract, and will not be heard to assert any right thereto under the timber-culture law. 13-283

261. Who at the time of initiating contest applies to enter part of the land, omitting certain tracts included within the settlement claim of a third party, and thereafter makes no protest against the occupancy of such settler, is estopped from asserting, as against the settler, his preference right. 27-30, 658

262. Is estopped from asserting his preference right as against one with whom he has verbally agreed to waive said right,

and thus induced said party to settle upon and improve the land. 14-381

263. Who attacks a homestead entry of land within the prior desert entry of another, against whom no default is charged, acquires no preference right in the event of success. 16-310

264. Preference right not secured by a contest against an entry covering land reserved from such appropriation. 15-71

265. The standing of one who files a soldier's declaratory statement for a tract covered by the prior settlement right of another that is subsequently asserted in the form of an entry will not defeat the preferred right of a, who successfully attacks said entry. 20-334

266. Acquires no right by a contest against an entry of lands reserved on account of a railroad grant, that will defeat the right of the entryman, in possession as a licensee, to purchase the land under section 3, act of September 29, 1890, and the act of January 23, 1896. 24-406

267. Where at the time of tendering his application to enter or locate land covered by an unapproved railroad indemnity selection the applicant questions the validity of such selection, and procures its cancellation, he does not thereby acquire a preference right, but is only entitled to have his application determined on its merits, and in event it is properly rejected he can not set up a new and independent right or claim to the prejudice of intervening adverse rights. 37-65

268. Land in the occupancy of an Indian is not subject to entry, and a contest against an entry of land so excluded from disposition will confer no right that will prevent the department from subsequently holding the land in reservation, with a view to its allotment to the Indian. 24-413

269. An application under the timber and stone act, filed in due time, is a valid exercise of the preference right obtained by a successful contest against a homestead entry. 36-272

270. Who successfully attacks an entry covering a tract within the limits of a withdrawal for a public reservation, made after said entry was allowed, does not thereby secure a right that will exclude said tract from the reservation. 18-523

271. Right of, in the nature of an adverse claim that will defeat equitable action on the entry. 1-78

272. Who, in exercising his preference right, locates a soldiers' additional right upon the land, and thereafter, under the belief that the first right is defective, locates another soldiers' additional right upon the same land, does not thereby waive any rights secured by the first location. 30-61

273. Where contestant in the exercise of his preference right applies to locate separate soldiers' additional rights on the different legal subdivisions constituting the contested entry, such applications may be treated as one application for the entire body of land. 36-499

274. An occupant of a town lot within an abandoned townsite claim acquires no right by his occupancy that will defeat the preferred right of one who successfully contests the townsite claim; nor will the homestead application of such occupant, tendered during the pendency of said contest, operate as a bar to the exercise of the preferred right. 28-530

275. The heirs of a successful contestant against a homestead entry, who make entry in the exercise of the preference right, stand in the place of the deceased contestant, with the same rights and privileges and burdened with the same duties and obligations relative to compliance with law in the matters of residence and cultivation. 36-26

276. Upon the successful termination of a contest commenced by a person who dies prior to such termination, the person or persons who seek, under the act of July 26, 1892, to exercise the preference right, are required to show merely that they are the heirs of the deceased contestant and citizens of the United States, and that the contestant was a qualified entryman at the time of his death. 33-465

277. Under the act of July 26, 1892, the heirs of a deceased contestant are entitled to the same rights that contestant would have been entitled to if his death had not occurred, and where at the time of his death he was disqualified to make entry by reason of being an alien and not having declared his intention to become a

citizen, no rights exist to which his heirs can succeed. 36-168

CONTIGUITY.

See COAL LAND, 40-42; DESERT LAND, II, b; ENTRY, 28-38, 276; MINING CLAIM, 84, 782-786; PREEMPTION, 224-225; REPAYMENT, VI; SETTLEMENT, 197-198; TIMBER AND STONE ACT, 31-32; TOWN SITE, 61-62, 67.

CONTINUANCE.

See FINAL PROOF, VI; PRACTICE, V.

CONTRACT.

See ACCOUNTS, 45-58.

1. One who seeks to rescind a, on the ground of fraud should establish the charge by irrefragable evidence and tender return of the consideration received. 15-451

CORPORATION.

1. A corporation is a resident, subject, or citizen of the State in which it is created and can have no legal residence beyond the boundaries of such State. 33-680

2. A corporation in acquiring title under the public-land laws must be regarded as an entity, with no greater right than an individual. 39-460

COSTS.

See ACCOUNTS; FEES; PRACTICE, VI.

COURT OF CLAIMS.

1. Jurisdiction to consider referred cases. 4-5, 14

2. Reference of cases to, discretionary with the department. 4-443

3. Not an appellate court for reviewing decisions of the department. 4-443

4. Case pending before General Land Office not referred to. 4-375

CREDIT ENTRY.

See ENTRY, 260.

CULTIVATION.

See **CONTEST**, 431-434, 516-525; **FINAL PROOF**, 383-389, 488, 568-575; **HOMESTEAD**, XII, 1156-1158; **PREEMPTION**, 23.

1. "Disking" as cultivation. 37-75
2. Planting a crop with no expectation or intention of securing a return therefrom is not compliance with the law. 22-205

3. Of a tract under authority of a railroad company that has no right thereto confers no right as against others. 11-559

DEATH.

See **APPLICATION**, 262-264; **CONTEST**, V; **CONTESTANT**, 66-80, 275-277; **DESERT LAND**, 106-107; **EVIDENCE**, 221-222; **HOMESTEAD**, III.

DECISION.

See **JUDGMENT**; **JURISDICTION**; **LAND DEPARTMENT**; **RES JUDICATA**.

1. In the preparation of, for the signature of the Secretary or commissioner, where prior opinions are cited, the reference should be to the volumes published by the department, if such opinions or decisions are found therein. 3-419

2. Publication in the Land Decisions is not equivalent to an official promulgation. 12-252

3. Of the local officers should be signed by both if they concur in the conclusions reached. 12-642

4. If, through inadvertence, either the register or receiver fails to sign an opinion that is in fact the opinion of both, the signature may be attached, *nunc pro tunc*, at any time before the record is transmitted. 12-642

5. Of the department in matters of procedure is notice to all parties, equally with the rules of practice. 13-635

6. Will not be made on hypothetical cases or questions irregularly presented. 2-765; 4-310, 389, 393, 451; 5-258; 9-194

7. Of the local office are not effective until passed in review by the General Land Office. 3-567; 5-246

8. Appeal will not lie from promulgation of a departmental. 15-190

9. Of the officers of the Land Department, made within the scope of their authority, are generally conclusive everywhere, except when reconsidered by way of appeal within the department. 13-15

10. Of the local officers as to the facts is entitled to special consideration, and the fact that they personally inspected the premises adds to the value of their conclusion. 16-95

11. Of local officers as to matters of fact entitled to special consideration. 4-135; 6-225, 330, 660

12. The mere fact that a departmental decision is rendered in the shape of a formal affirmance of the decision appealed from is no ground for objection, where the decision below sufficiently sets forth the facts and covers all the material questions involved. 35-134

DECLARATORY STATEMENT.

See **COAL LAND**, III; **FILING**; **HOMESTEAD**, IX.

DEDICATION.

1. Of land for municipal uses under statutory proceedings divests the Government of title. 10-375

2. Of land may be made by the United States. 10-375

3. By the proceedings under the act of September 26, 1850, title was passed to the village of Sault Ste. Marie of the land set apart for cemetery purposes and on incorporation of the village said title vested in the municipal authorities. 10-375

DEED.

1. From husband to wife recognized as valid if authorized under the laws of the State in which the land is situated. 4-355, 432; 8-502; 12-244, 455

2. Though absolute on its face, may be shown to have been given as a mortgage. 14-537

3. Though in form a, may be treated as testamentary in character. 20-428

4. A duly appointed commissioner of deeds for the State of California is an

officer of that State, and deeds executed outside the State before such commissioner are not, in contemplation of law, extra-territorially executed, but have the same force and effect as if executed within said State before any officer authorized by law to take acknowledgments. 32-112

DEPOSITION.

See EVIDENCE, II.

DEPUTY MINERAL SURVEYOR.

See LAND DEPARTMENT, 9-11, VI.

DEPUTY UNITED STATES SURVEYOR.

See LAND DEPARTMENT, VI.

DESERT LAND.

See ALIENATION, III; APPLICATION, III; CONTEST, IX; EQUITABLE ADJUDICATION, II; FINAL PROOF, XI; WATER RIGHT.

I. Generally.

II. Entry.

III. State Selections.

I. Generally.

1. Circular regulations, June 27, 1887. 5-70.

2. General desert-land circulars of November 30, 1908, and September 30, 1910. 37-312; 39-253

3. The act of March 3, 1875, providing for the entry of, in Lassen County, Cal., is repealed by the amendatory act of March 3, 1891. 16-467

4. Land which, one year with another for a series of years, will not without irrigation make a fair return to the careful, ordinarily skillful, and industrious husbandman, is. 2-19, 20

5. Lands that one year with another for a series of years will not without irrigation produce reasonably remunerative crops are desert within the meaning of the desert-land law. 37-522

6. Land which produces a crop, though an inferior one, whether of grass, wheat, barley, or other crop to which the soil and climate are adapted, which is a fair re-

ward for the expense of producing it, is not. 2-19

7. Annual rainfall taken into consideration in determining whether land is desert in character. 28-501

8. Lands within a notoriously arid region, and themselves previously desert, do not necessarily lose such character merely because of unusual rainfall for a few successive seasons their productiveness was increased and larger crops were raised thereon; and under such circumstances a strong preponderance of evidence will be required to take them out of the class of desert lands. 37-522

9. One who makes desert entry of such lands must, however, clearly show, in submitting proof, not only that he has the right to sufficient water to successfully irrigate the lands, and that the system of ditches is adequate for that purpose, but also that the water has been actually used on said lands in a manner to prove the beneficial results. 37-522

10. Though it may appear that the productiveness is increased by irrigation, such fact does not establish the desert character of land. 7-125

11. Land that without irrigation will produce grass in paying quantities is not subject to desert entry. 2-18; 4-33; 8-163; 10-169

12. A tract bordering on a stream and containing living springs, and that includes land that produces a natural growth of grass in paying quantities, and trees of native growth, is not subject to desert entry. 7-180; 10-558; 11-206

13. An entry should not be allowed of land on each side of living water, in the absence of the clearest proof of the desert character of the land. 27-123

14. Land that produces a natural growth of timber is not subject to desert entry, and it is immaterial whether such timber is of value or otherwise. 5-595; 7-425; 12-34; 15-271

15. A natural growth of timber occupying a narrow nonirrigable ridge that forms a small part of a tract embraced within a desert entry will not be held to defeat the entry. 22-412

16. A growth of mesquite trees will not exclude land from desert entry if it ap-

pears that said land will not, without irrigation, produce an agricultural crop.

6-662

17. Lands partly desert and partly agricultural can not be entered under the desert act.

4-33

18. Clear proof as to character of land required where the field notes describe it as "first rate" and the plat shows a river crossing the section.

4-261

19. Strong proof required to establish the desert character of land returned as "good" or "first-rate" bottom land.

7-425

20. That the land was at one time included within a hay reservation raises a presumption against its desert character, but such presumption is not conclusive. (See 14-233.)

10-313

21. Reclaimed land not subject to entry.

4-165; 14-194

22. Already reclaimed and held by another not subject to entry.

16-40

23. Desert land so far reclaimed by a former entryman that in one year it produced 200 tons of hay is not subject to desert-land entry after the relinquishment of the land by such entryman.

40-294

24. The mere fact that a tract of arid land is traversed by an irrigating canal is not sufficient to constitute reclamation thereof, nor take it out of the class of lands subject to desert entry.

23-138

25. Additional proof as to the character of land covered by an entry may be properly required by the department.

9-379

26. Lassen County, Cal., lies in a section of the country designated by Powell as "the arid region."

2-21

27. The degree of productiveness after irrigation does not necessarily determine the right of entry if the land is in fact desert and water sufficient for irrigation has been supplied.

14-270

28. An entry will not be allowed of land chiefly valuable for saline deposits, and practically not susceptible of reclamation on account of its saline character.

20-299

29. If taken under the homestead law, compliance with its terms must be shown.

5-297

30. Declaratory statement filed under the Lassen County act, by one who holds another tract under a previous filing,

confers no right as against the subsequent homestead entry of another.

14-220

31. Under the act of August 30, 1890, a homestead entry of, subject to the arid-land act of 1888 is protected and may be perfected if not selected for a reservoir.

14-123

II. Entry.

- (a) Generally.
- (b) Compactness.
- (c) Amendment and Enlargement.
- (d) Annual Expenditure.
- (e) Assignment.
- (f) Reclamation.
- (g) Second.

(a) Generally.

32. Circular regulations of June 27, 1887.

5-708

33. Circular regulations of April 20, 1891, giving directions for the manner of proceeding in case of final entry before survey.

12-376

34. Regulations of November 30, 1906, under section 5, act of June 27, 1906, relative to desert entries within withdrawals under reclamation act.

35-340

35. Regulations of November 30, 1908, and September 30, 1910, governing desert entries and proofs.

37-312; 39-253

36. May be made prior to survey of land.

5-528

37. When made prior to survey the entryman is entitled on survey of the township to have his claim properly described by legal subdivisions.

7-177

38. The act of August 4, 1894, extends relief to certain classes of; circular of October 11, 1894.

19-298

39. Restricted to 320 acres by the act of August 30, 1890.

14-336

40. Restriction in acreage under act of 1890 not applicable where prior to issuance of the circular of August 9, 1890, application is made and accepted for 640 acres, though an irregularity in the matter of the accompanying payment delays action thereon.

14-551

41. The desert-land right under the acts of March 3, 1877, and March 3, 1891, is exhausted by either making or taking by assignment an entry for 320 acres.

38-438

42. Where one who had exhausted his right by taking an entry by assignment

was nevertheless permitted to make another entry in his own name, it may be permitted to stand if within the provisions of the act of March 26, 1908, authorizing second desert entries, notwithstanding a pending contest charging disqualification at the time the entry was made.

38-438

43. One who files desert land declaratory, prior to appointment as register, and thereafter resigns and after acceptance of resignation, but while still performing the duties of the office, applies to relinquish part of the claim and make homestead entry thereon, is not entitled to such right.

2-106

44. No presumption against good faith arises from the fact that the entryman was formerly register of the land office where the entry was made.

9-534

45. Right of entry not defeated because the son of the entryman was chief clerk in the local office.

4-77

46. By the sister of a receiver is not necessarily invalid.

2-105

47. One engaged as the agent or attorney of others in procuring information from the records of the local office for the benefit of such individuals is not by such employment disqualified under section 452, R. S., to enter public land.

16-546

48. Made by one who has accepted an appointment in the local office, but has not yet entered upon his duties, is in violation of the spirit of the law which prohibits employees of the land office from becoming interested in the purchase of public land.

11-280

49. Section 452, R. S., does not prohibit a homesteader from completing title by due compliance with law who, after entry, accepts and holds an appointment in the General Land Office that gives no advantage in prosecuting his claim.

15-266

50. A settler in good faith, subsequently appointed register before the land is opened to entry, is entitled to perfect his claim under section 2287, R. S., the same as though it had been initiated by an application to enter.

11-18

51. One who after attempting to perfect an entry taken by assignment relinquishes the same in the face of charges by a special agent is disqualified to make original entry of the same tract.

37-149

52. Sioux lands opened by act of March 2, 1889, not subject to.

29-541

53. Application must show personal knowledge of the applicant as to the character of the land.

7-312; 8-96

54. The preliminary affidavit must be upon personal knowledge of the entryman, derived from personal inspection of the land.

12-90

55. Will not be canceled for failure to show personal knowledge of the land if the entry was allowed under an existing practice which did not require such showing.

11-155

56. Application to make in accordance with existing regulations should not be rejected because not in conformity with later regulations as to the personal knowledge of the applicant concerning the character of the land.

8-408

57. A personal inspection of the tract prior to application therefor confers no priority as against other applicants or settlers.

13-207

58. Claim for, initiated by the application and not by settlement.

6-541

59. The initial act in establishing a claim is the payment of 25 cents per acre, and prior thereto no rights are acquired under the act of 1877.

13-207

60. The essential act in making, is the payment of the first installment of the purchase price.

21-189

61. Entry in the interest of another not permitted.

4-445; 7-337, 378

62. Allowance of initial, does not deprive the local office of jurisdiction in subsequent proceedings directed by the department to ascertain the validity thereof.

12-34

63. That embraces some land not subject thereto is not necessarily fraudulent.

11-206

64. A small amount of nonirrigable land may be included in the entry.

5-481; 6-23

65. A tract the greater portion of which is nonirrigable may not be taken as.

6-39

66. Entry not allowed to include nonirrigable tract of 80 acres.

8-113

67. On exclusion of nonirrigable land the entryman may elect which contiguous tracts he will enter.

6-38

68. In the absence of an adverse claim, an entry made in good faith will not be canceled though it includes nonirrigable land. 9-137

69. Of no consequence to the Government whether the nonirrigable land covered by the entry is situated in one or more of the smallest legal subdivisions. 8-48

70. The nonirrigable character of a portion of the land entered will not defeat the right to a patent if the land susceptible of irrigation is reclaimed and the remainder is of no value to the Government. 10-495; 21-211

71. The nonirrigable character of the greater part of a 40-acre tract will not defeat an entry therefor if the land susceptible of irrigation is reclaimed in good faith and the remainder is valueless from its rocky and hilly character. 9-204

72. An entry will not be disturbed on the ground that the larger portion of each smallest legal subdivision is nonirrigable if the reclamation shown is otherwise satisfactory and the desert character of the land is apparent. 11-277

73. If negligence does not appear, the entryman may be permitted to relinquish the nonirrigable part of the land covered by his entry and submit proof for the remainder. 9-430

74. The law restricts one person to an entry of one tract, in a compact form, not exceeding 640 acres. 1-28; 2-22; 3-215

75. An individual or corporation not permitted through indirection to secure more than one. 7-337

76. Entries for, treated as preemptions under the act of May 14, 1880. 3-69; 5-694, 708; 6-1, 572; 7-186

77. But one declaration of intention to make entry allowed. 5-414

78. Right of married woman to make, recognized. 6-114, 541; 10-48

79. By the amendatory act of March 3, 1891, the right to make is restricted to resident citizens of the State or Territory in which the land is situated. 19-495

80. The provision of the amendatory act of March 3, 1891, requiring the entryman to be a resident citizen of the State in which the land is situated, is not applicable to entry made prior to said act. 24-466

81. Made under the act of March 3, 1877, by one not a citizen of the State in which the land is situated, but a qualified citizen of the United States, may be perfected under the amendatory act of March 3, 1891. 24-306

82. The limitation of the right to resident citizens applies at final entry as well as the original. (See 20-67.) 14-565

83. Made subsequent to the act of March 3, 1891, limiting the right to resident citizens, and in violation of such restrictions, must be canceled, though allowed by the local officers before they learned of the passage of said act. 14-596

84. The phrase "resident citizen," as used in the statute as amended March 3, 1891, embraces persons entitled to protection in the exercise of civil rights, and should be read in connection with sections 1 and 7 of said act. 14-677

85. A citizen of one State or Territory who goes to another State or Territory with the avowed intention to make his permanent home therein, and in his sworn application to make entry declares himself to be a resident of such State or Territory, is held to be a "resident citizen" thereof and in that respect qualified to make entry therein, where in pursuance of his expressed intention he makes his home in such State or Territory, even though he may not, at the date of making the entry, have acquired a political residence such as would entitle him to the voting privilege. 34-586

86. The word "enter" as used in section 8, act of March 3, 1891, does not mean final entry, but should be construed as applied to the original entry. 20-67

87. An actual resident of the State or Territory in which the land is situated who has declared his intention to become a citizen is qualified as to citizenship to make entry under the amendatory act of March 3, 1891. 15-343

88. An entry made under the act of March 3, 1877, but not completed until after the passage of the act of March 3, 1891, is governed, so far as price is concerned, by the law in force at the time the entry was made. 31-277

89. A claimant who has made entry under the act of March 3, 1877, at any time during the life of his entry, and after

the passage of the act of 1891, may elect to proceed under the latter act. 20-218

90. An applicant for extension of time under section 6 of the act of March 3, 1891, should file in the local office a sworn statement of his intention to proceed under said act, showing what has been done by him in regard to the land, and that since he determined to take advantage of the act in question he has complied with the provisions thereof. 17-398

91. After the expiration of three years from the date of the original entry, and subsequent to the intervention of an adverse claim or contest, it is too late to accept the option given by the amendatory act. 19-121, 231

92. The rule requiring claimants who elect to proceed under the amendatory act to file a sworn statement of intention to so elect will not be held retroactive. 21-233

93. There is no requirement in the act of March 3, 1891, that an entryman, who at the passage thereof has an entry under the act of 1877, and elects to proceed under the amendatory act, should at the time of election file a map showing the plan of irrigation. The right of the entryman, in such case, is protected if he formally elects to proceed under the latter act, and gives notice of such election. 21-233

94. Where the election of an entryman to proceed under the act of 1891 is to the satisfaction of the local officers, and prior to the promulgation of the rule requiring a sworn statement as to such election the rights of the entryman under the later law are duly protected, though the sworn statement as to his intention is not made as required by said rule. 21-244

95. The failure of an entryman to file a map showing the plan of contemplated irrigation, as required by section 4 of the act of 1891, may be cured, in the absence of any adverse claim, by subsequent compliance with law, and furnishing a map on final proof showing the character and extent of the improvements. 20-61

96. A desert entryman who becomes the owner of improvements placed upon the land by a prior entryman in compliance with the desert-land law is entitled to

credit for such improvements the same as if placed upon the land by himself. 33-287

97. A desert entryman is entitled to credit for improvements placed upon the land by him in compliance with the homestead law while holding the land under a prior homestead entry, provided they are of a character required by the desert-land law. 33-547

98. The character of land at the date of desert entry thereof controls in determining whether the land is subject to such entry, and the fact that the entryman purchased the improvements of a prior desert entryman for the same land does not entitle him to have the character of the land determined as of the date of the prior entry. 37-89

99. The possession and improvement contemplated by the act of March 28, 1908, according a preference right to make desert entry to one who has "taken possession of a tract of unsurveyed desert land . . . and has reclaimed or has in good faith commenced the work of reclaiming the same," are not such as required of a settler under the homestead law, but it is sufficient under that act if the possession and improvement conform to the requirements of the desert-land law and evidence the party's good faith under that law. 40-264

100. An adverse settlement claim will not defeat a, if due priority of right is not shown thereunder. 23-436

101. Not allowed for land covered by the improvements of a *bona fide* settler. 8 630

102. Though allowed, is subsequently subject to the supervisory authority of the department. 9-379

103. In each the questions are: (1) Is the land desert in character and entry compact in form; and (2) is the entryman duly qualified, and has he shown due compliance with law. 8-48

104. By contesting and procuring the cancellation of an entry made under the act of March 3, 1877, as amended by the act of March 3, 1891, the contestant acquires a preference right of entry. 32-418

105. May be allowed subject to the preference right of successful contestant. (See 15-424.) 7-227

106. If the record shows the death of the entryman, the patent should issue in the name of the heirs generally. 13-49

107. The right of an entryman under the act of March 3, 1877, who dies prior to completion of his entry, descends to his heirs and may be perfected by them. 28-343

108. Made under the Lassen County act since the repeal thereof must be canceled; but claimant may, if qualified, make new entry under the amended act with credit for amount expended in reclamation. 14-467

109. Made either under the Lassen County or the general act, and abandoned, exhausts claimant's right. 18-580; 26-673

110. Or declaration of intention to make entry, under either the Lassen County or the general act, exhausts the right of entry, and precludes the allowance of a second entry. 18-99

111. The regulations adopted after the passage of the act of 1877 were formulated on a construction of said act, in connection with the Lassen County act, which held that the right of entry could not be exercised by the same person under both acts. 19-247

112. Declaratory statement filed under the Lassen County act by one who holds at the same time another tract under a previous filing confers no right. 14-220

113. Made in good faith, in ignorance of the fact that the land was included within a hay reservation, may stand where such reservation is subsequently abandoned and the land restored to the public domain. (See 14-233.) 10-313

114. The act of July 5, 1884, does not protect a desert land entry made while the land was reserved for military purposes. 14-232

115. The suspension of land from, on account of irregularity in the survey does not necessarily carry with it the invalidity of a desert-land entry made during such suspension. 18-185

116. Allowed to stand though made when the land was apparently not subject thereto, the bar having been removed, no adverse claim existing, and due reclamation shown. 6-23

117. Made after the act of October 2, 1888, of lands subsequently designated for

reservoir purposes, is invalid, but may be suspended under section 17, act of March 3, 1891, with a view to allowance in event the land is not required for the purpose designated. 13-45

118. The departmental order of September 12, 1877, suspending Visalia entries, revoked and directions given for the disposition of pending contests and the reception of final proof. 12-34

119. Under section 1, act of March 3, 1877, the waters of nonnavigable streams are open to appropriation for purposes of irrigation, and may be so taken by the entryman, if he is the first *bona fide* appropriator thereof; and the fact of such appropriation may be shown by parol evidence. 28-512

120. The act of March 3, 1877, provides that the water right of a desert entryman shall depend upon prior appropriation, and evidence which satisfactorily establishes the fact that the entryman has thus acquired and possesses an undoubted right to the requisite supply of water is sufficient. 29-133

121. It is not of itself evidence of fraud, or ground for contest, that a group of desert-land entrymen agree voluntarily to subject their lands to the support of an irrigation system from which water may be taken for their reclamation. 38-429

122. A direction to withhold patent on all entries within a given land district does not amount to a suspension of such entries, and the jurisdiction of the local officers to consider contests against the same is in no wise affected thereby. 34-426

123. The authority of the local officers to order a hearing on a contest is in no wise affected by an order of the Land Department suspending all entries in the township in which the entry in question is situated, where the order of suspension was not issued until after the expiration of the statutory life of the entry. 34-426

124. Where an entry is suspended prior to expiration of the statutory life of the entry, for the purpose of investigating the character of the land, a contest against the same, charging that the land is non-desert, and also that the entryman has failed to comply with the law in the matter of reclamation, may be entertained in so far as it charges the nondesert charac-

ter of the land, but should be dismissed as to the charge relating to noncompliance with law; and if as a result of the contest it be determined that the land is of a character subject to entry, the suspension should be removed. 34-521

(b) Compactness.

See REPAYMENT, VI.

125. Must be compact in form; how determined. 4-34, 317

126. No inflexible rule as to compactness can be laid down, but each case must be considered in the light of the facts presented. 5-4; 24-306

127. Circular of November 28, 1902, relative to compactness. 31-441

128. Decisions and regulations of the department with respect to "compactness" cited and compared. 8-104

129. In determining compactness the relation of the land to adjacent tracts may be considered. (See 5-429.) 5-4, 642

130. The existence of prior adjacent entries and the topography of the country must be taken into consideration in determining the question of compactness. 9-248; 11-27; 22-412

131. The nonirrigable character of adjacent tracts may be properly considered in determining whether within the rule as to compactness. 27-123

132. Statutory requirements as to compactness must be followed rather than departmental regulations. 5-429

133. Amendment required where the rule as to compactness has not been observed. 7-247

134. Covering technical three-quarters of section is compact. 4-291

135. Is not compact that covers a narrow strip of land lying along and upon both sides of a stream. 6-536; 9-202

136. Two miles in length for 360 acres not compact. 4-445

137. On adjustment to conform to the requirement of compactness due regard may be given to the situation of the land and its relation to other lands at the time the entry was made. 9-202, 307

138. An entry allowed in accordance with existing regulations and for which proof was accepted will not be disturbed, though

not within the later requirements as to "compactness." 8-104

139. Allowed in conformity with existing regulations as to compactness should not be canceled under later regulations imposing a more rigid rule. (See 9-202.) 8-231

140. The requirement of compactness is statutory; hence an entry in obvious violation thereof is not protected by the fact that it was made before the department issued instructions as to said requirement. 9-202, 307, 379

(c) Amendment and Enlargement.

141. Paragraph 3 of instructions of February 29, 1908, governing amendments of original entries, construed to embrace desert entries. 37-43

142. Amendment after the period for reclamation has expired can only include reclaimed land. 7-247

143. May be amended by substituting a tract not included therein for one of the subdivisions covered by said entry where after diligent effort it is found impossible to effect reclamation of said subdivision. 21-265

144. An assignee who subsequently makes entry of adjoining land in his own right will not be permitted to amend his entry so as to take in the land covered by the assigned entry, with a view to thereby extending the life of the latter to correspond to the lifetime of his own entry. 36-446

145. The right to enlarge desert entries is governed by the same general principles as govern the enlargement of homestead entries. 40-512

146. A desert entryman who made entry for less than the area he was entitled to take under the law, because of the fact that all the vacant contiguous public land was at that time nonirrigable from any known source of water supply, may, upon such land subsequently becoming susceptible of irrigation, be permitted to enlarge his entry to the full amount authorized by law. 40-512

147. Where a desert entry is made for a less area than the entryman is entitled to take under the law, in the belief that the tract entered is all the land susceptible

of irrigation from the available water supply, but it subsequently develops that the water supply may be conserved and made available to irrigate another adjoining tract, he may be permitted, in the absence of adverse claim, to amend his entry to include such adjoining tract.

40-576

148. Where an entryman does not include in his entry the full area allowed by law, for the reason that there is no vacant land adjoining that entered which is susceptible of irrigation and reclamation, he may, if adjoining land of the character subject to entry thereafter becomes vacant, enlarge his original entry so as to include therein the full area allowed by law.

33-110

149. The enlargement of entries made for less than the maximum area will be allowed only in cases where the entryman could not, because of entries or filings covering the adjacent lands, embrace in his entry the full quantity allowed by law, but immediately took steps to clear the record as to a particular tract of such adjacent land, with the view to subsequently including such tract in his own entry, and clearly indicated in his application to make the original entry that such was his intention.

36-44

150. The instructions of July 26, 1907, to the effect that where a desert entryman can not at the date of his entry take the full quantity allowed by law, because of entries or filings covering the adjacent lands, but at that time clearly indicates his desire and intention to take certain of such lands, and immediately takes steps which result in clearing the record as to the tracts desired, he may thereupon be permitted to enlarge his entry by including such tracts to the extent of the full area allowed by law, contemplate that the proceeding to clear the record as to desired adjacent lands shall be initiated promptly, and can not be invoked where there is any considerable delay in taking the initiatory steps with a view to clearing the record.

37-369

151. Where a desert entryman could not at date of entry, because of an existing withdrawal covering part of the land desired by him, embrace in his entry the full area allowed by law, he may, upon

restoration of the withdrawn lands, be permitted to enlarge his entry to conform to his original intention.

39-48

(d) Annual Expenditure.

152. The act of 1891 does not authorize taking annual proof before a notary public.

20-111

153. There is no authority for acceptance of proof of annual expenditure executed before a clerk of a court of record outside the land district and State in which the land is situated.

29-355

154. Orders of the General Land Office with respect to annual proof will be treated as interlocutory, from which no appeal will be allowed.

20-111; 24-306

155. The annual proof showing the expenditure of the requisite amount, if filed, preserves intact the entry during the three years, or prior to offering final proof. In *ex parte* cases the entryman's right to the land will not be passed upon until the submission of final proof.

20-111

156. The local officers should not reject annual proof. If found insufficient, they should inform the entryman that adverse action thereon will be recommended, and that he will be allowed 30 days in which to file exceptions. The proof, recommendation, and exceptions should be transmitted to the General Land Office for consideration.

20-111

157. The provision in section 7 of the act of 1891, authorizing calls for additional proofs, has reference to entries made prior to the passage of said act in which the entryman has elected to perfect his entry under said act.

20-101

158. The fact that the annual expenditures are made by another for the entryman, is not sufficient ground for contest, if made in good faith to effect reclamation, and not with a view to indirectly obtaining title to the land.

38-429

159. To entitle a desert entryman to credit for improvements made upon the land by a former entryman they must be permanent in character and have enduring utility tending to effect reclamation of the land; therefore expenditures for breaking by a previous entryman can not be accepted toward meeting the require-

ments of the statute where the ground broken has been permitted to relapse to its original state. 40-261

160. The cost of fencing may be properly shown as an expenditure authorized under section 2, act of March 3, 1891. 20-61, 81

161. An expenditure for "disking," with a view to planting crop, may be accepted as equivalent to first plowing, where the land is of such character that diskings is the best practical way of preparing it for crop and the method usually employed in that vicinity, and the entryman is entitled to credit therefor toward meeting the requirements of law with respect to annual expenditure. 37-75

162. Expenditures for machinery for boring wells with a view to developing a water supply for irrigation of the land can not be accepted toward meeting the statutory requirement relative to expenditures for permanent improvements. 35-638

163. Well casing purchased and placed upon the land can not, so long as it is unattached to the realty and retains its status as personal property, be considered a permanent improvement. 35-92

164. The mere purchase of well casing alleged to be with a view to constructing an artesian well, but which was never used for such purpose, nor even removed to the land, but was paid for by note and left in the warehouse of the merchant from whom it was purchased, does not constitute a "permanent improvement," and the value thereof can not be applied toward meeting the requirements relating to annual expenditure. 34-279

165. Where a desert entryman submits first-year proof prior to the expiration of one year from the date of the entry, and contest is thereafter and within such period initiated against the entry, charging failure of the entryman to make the required first-year expenditure as set forth in the proof, he is not thereby precluded from thereafter submitting further first-year proof showing expenditures made upon the land at any time within the first-year period. 40-452

166. The annual expenditures, and proof thereof, required by the act of March 3, 1891, are for information of the Land De-

partment and as evidence of good faith, and a contest for default of such proof may be defeated by the filing of proof subsequent to the initiation of the contest, but prior to final action thereon, showing that the requisite annual expenditure has in fact been made. 34-675

167. The law requires an annual expenditure of \$1 for each acre embraced in the entry, for the first, second, and third years, but does not require that the first or any other annual expenditure shall effect reclamation of any part of the land, the sole requirement in that respect being that the land shall be reclaimed within the period allowed therefor. 34-675

168. In determining whether an entryman has complied with the requirements relative to annual expenditure, the reasonable value of the work or improvements is the criterion, and not the amount alleged to have been expended therefor. 36-106

169. An expenditure for stock in an irrigation company by means of whose system the entryman proposes to irrigate his land, each share of stock entitling him to a certain amount of water, is an expenditure for the "purchase of water rights" within the meaning of section 5, act of March 3, 1891, and he is entitled to credit therefor toward meeting the requirements with respect to annual expenditure, notwithstanding such stock may be transferable. 36-395

170. Regulations of August 21, 1909, relative to expenditures for stock in irrigation companies. 38-157

171. A certificate of stock in a water company which under the by-laws of the company is limited, under penalty, to location and use upon a certain designated 20-acre tract, can not be accepted toward meeting the requirements of the desert-land act with respect to water rights as to another and different 20-acre tract embraced in the same entry, notwithstanding the amount of water to which the entryman is entitled under the stock may be more than sufficient to irrigate the 20 acres to which it is appurtenant. 39-285

172. Payment by a desert entryman to cover his proportionate share of the cost of construction and maintenance of irriga-

tion works by means of which his land is proposed to be irrigated is a proper basis for annual proof. 39-127

173. While annual proof submitted upon a desert entry showing expenditures for construction and maintenance charges on irrigation works by means of which the land is proposed to be irrigated can not, in a contest proceeding against the entry on the ground of failure to make the required expenditures, be considered as substantive proof of such claimed expenditures, it is nevertheless notice to the world of the amount and character of the expenditure claimed, and it is incumbent on the contestant to challenge and disprove such claimed expenditure. 39-127

174. The act of August 4, 1894, dispensing with annual expenditure on desert entries for that year, applies to entries existing at the time said act took effect, and does not operate to revive entries rightfully canceled prior thereto. 26-499

175. The act of August 4, 1894, relieving desert entrymen from annual expenditure during the year of 1894, is applicable to entries made in said year, and prior to the passage of said act; and the year so given should be computed from the date of the entry. 26-298

176. The cancellation of a, without due notice to the original entryman, is unauthorized, and an entry so canceled prior to the act of August 4, 1894, must be held in law an existing entry, and entitled to the benefit of said act. 26-499

177. An entryman under the act of 1877 who, after the expiration of his entry, and prior to the passage of the act of July 26, 1894, elects to proceed under the amendatory act of 1891, takes, by way of the extension of time under said act of 1894, the same privilege as though his entry had been originally made under said act of 1891. 23-293

178. By the act of August 4, 1894, extending the time for compliance with the law, Congress relieved all entrymen from expenditure and proof for one year, and the entry year, not the calendar year, was meant. In the application of said provisions to particular cases, if the entryman was in default for a year ending in 1894, the act should be applied to cure the default for that year; if not in default

for the year ending in 1894, he should be excused for the entry year beginning in 1894. 23-293

(c) Assignment.

179. Not assignable. 1-28

180. Assignments before final proof recognized prior to April 15, 1880. 5-21, 597

181. Assignments of entries made while the rule was in force allowing the same will be protected. 3-214; 5-167, 595

182. A claimant under an alleged assignment must show the fact of assignment and that it was made prior to April 15, 1880. 14-123

183. One person can not take more than 640 acres, either as entryman or assignee. 2-22; 5-19, 167, 597

184. Under the act of 1891 the assignee of a desert entryman need not show on final proof that he is a resident citizen of the State or Territory in which the land is situated. It is sufficient in such case for the assignee to show that he is a citizen of the United States. 20-67; 22-1

185. A corporation organized under the laws of a State is in contemplation of law a citizen of the United States, and as such can take and hold by assignment a desert entry. 22-1

186. A corporation composed of individuals all of whom have exhausted their rights under the desert-land laws is disqualified to take the assignment of a desert entry. 37-567

187. A corporation seeking to hold lands under an assignment must show that the members composing the corporation do not hold, in the aggregate, by assignment or otherwise, more than 320 acres of land under the desert-land law. 33-383

188. In case of an application by a corporation, it is within the power and is the duty of the Land Department to inquire into the qualifications of the individuals composing the corporation to make entry in their own right. 34-430

189. It is within the power and is the duty of the Land Department to require a corporation, seeking to acquire title as assignee of the original entryman, to show that the individual members composing the corporation are not disqualified to hold and acquire title to such entry. 34-443

190. Patent will issue to entryman though assignment is recognized. 3-216;
5-167

191. Where an assignment of entry is recognized the assignee is entitled to all the rights of the entryman. 3-215

192. The assignment of a portion only of an entry will not be recognized. 32-608

193. Right of an assignee under an assignment made prior to April 15, 1880, can not be defeated by a subsequent relinquishment of the entry. 16-167

194. The provisions of the act of March 3, 1891, amendatory of the act of March 3, 1877, with respect to the assignment of desert entries are applicable to an entry made under the original act, but assigned after the passage of the amendatory act, and perfected in accordance therewith. 27-721

195. Recognition in the act of March 3, 1891, of the right of assignment of desert entries, does not have the effect to except that class of entries from the prohibition contained in section 2372, R. S., against amendment of entries by assignees; but as that section applies only to entries where the legal or equitable right has passed from the Government and vested in the entryman, the Secretary may, by virtue of his supervisory powers, allow amendments by assignees of desert or other entries whereof the right of assignment is recognized, provided the legal or equitable title still remains in the Government. 33-251

196. Recognition in the act of March 3, 1891, of the right of assignment furnishes no authority for recognizing a right on the part of an entryman to enter into an executory contract to convey the land after the issuance of patent and to thereafter proceed with the submission of final proof in furtherance of such contract. 34-383

197. A mortgage of land covered by a, can not be regarded as entitling the mortgagee to the status of an assignee of the entry until after foreclosure of the mortgage, if, under the laws of the State in which the land is situated, a mortgage of real property is not a conveyance thereof. 24-418

198. A mortgagee who secures the foreclosure of a mortgage covering land em-

braced within a, prior to the time final proof is due on said entry, may be regarded as an assignee, and entitled to submit final proof. 25-375

199. An assignment to one disqualified to acquire title under the desert-land law does not render the entry fraudulent, but leaves the title thereunder still in the entryman. (See 38-253.) 25-323; 28-497

200. Where assignment is made and the assignee recognized by the General Land Office, the entryman thereby parts with his title to the land, even though it be subsequently shown upon contest or investigation that the assignee is not qualified to hold by assignment. 38-253

201. The right of a person claiming under an instrument of assignment of an unperfected entry to recognition by the Land Department is dependent upon filing in the local office a certified copy of the instrument, together with an affidavit, executed by himself before the proper officer, showing his qualifications to take and complete the entry. 35-474

202. The act of March 3, 1891, authorizes the sale and assignment of; and such a sale, made by the guardian of an insane entryman acting under an order of the court in accordance with the local statutes, will be recognized by the department. 30-71

203. Where the entryman, prior to survey, submits final proof, and then sells the land, such sale must be regarded as an assignment of the entry, proof of which should be furnished as required in other cases of assignment. 29-453

204. Prior to final proof and certificate, a desert entryman has no such right in the land as may be assigned by operation of law without any voluntary act on his part. 35-515

205. The affidavit of the assignee required by the regulations must be sworn to before one of the officers of the local land office, a United States commissioner, or a judge or clerk of a court of record in the county wherein the land is situated. 31-184

206. There is no authority for the acceptance of proof of assignment executed before a clerk of a court of record outside the land district and State in which the land is situated. 29-355

207. No assignable interest is acquired by the filing of a declaratory statement prior to the payment of 25 cents per acre as required by law. 33-152

208. One claiming as assignee of an entry acquires no such right, by showing the necessary annual expenditure and making the final proof and payment required by law, as will entitle him to patent, where the assignment under which he claims was made prior to the acquisition of an assignable interest in the land by the assignor. 33-152

209. A bill in equity by the assignee of an entryman of public land against the Secretary, who has directed the cancellation of the entry on the ground of fraud and collusion between the entryman and others, to enjoin the Secretary from proceeding further without first according the plaintiff a hearing upon the question of whether such fraud and collusion in fact existed, will not lie where it appears that, aside from such question, the land was not subject to the entry made, and that therefore the plaintiff had acquired no right thereunder from the assignor. 40-294

(f) Reclamation.

210. The only reclamation specified in the act is by conducting water upon the land. 3-9

211. The conversion of a worthless tract into grass-bearing land constitutes reclamation. 3-9

212. Reclamation shown by crops actually raised. 1-26

213. Fact of reclamation may be established without showing crops as the result of irrigation. 5-120, 151; 15-535

214. Is not reclaimed unless water in sufficient quantity for cultivation is carried upon the land. 1-26

215. The water conveyed upon the land must be in quantity sufficient to prepare it for cultivation. 2-692

216. Reclamation is an accomplished fact where water in sufficient volume has been brought on the land and so disposed as to render it available for distribution when needed. 18-16; 21-211

217. A water supply derived from wells on the land may be accepted as sufficient if it be shown that said supply is con-

trolled by the entryman, is permanent in character, and effectively used for the purpose of reclamation. 13-30

218. The present power to supply, by means of a pump and fixtures, water in a sufficient quantity to render the land productive, with due provision made for the distribution of the water, may be accepted as a proper showing, though at such time no crop is planted on the land. 27-516

219. Mode of irrigation not prescribed by the statute, but it should be such as to show good faith and reclaim the land. 9-419

220. There is no penalty provided for failure to reclaim, but in the place of forfeiture the purchaser is required to advance a part of the purchase price as an assurance of good faith. 3-9

221. Entry will not be disturbed where default in reclamation is cured before contest is brought. 3-9

222. Relinquishment will be required of subdivisions not substantially reclaimed. 7-253

223. Allowed for the land reclaimed on relinquishment of remainder. 7-23

224. Failure to reclaim for four years after entry shows an entire want of good faith. 2-18

225. The partial irrigation of a tract while held as a preemption claim by the entryman will not defeat his right under the desert-land act where substantial reclamation remained to be effected after the original entry. 7-374

226. Partial reclamation prior to application calls for special showing as to the facts. 4-165

227. The right by prior appropriation to the requisite water supply must be determined by the Land Department. 9-6

228. Should not be canceled in the absence of adverse claim, though on hearing it appear that the land was not reclaimed at date of final proof but that reclamation was subsequently effected. 8-48

229. Final proof after expiration of statutory period, allowed in the absence of adverse claims. 4-261

230. The right of an entryman, who has shown due diligence from the first, to equitable action on his entry, where he, through obstacles beyond his control, is unable to effect reclamation within the

statutory period, is not defeated by a contest, charging such failure, begun while he is engaged in curing his default.

21-211

231. Right of entryman who has shown diligence from the first to perfect his claim not defeated by an intervening contest where failure to effect reclamation within the statutory period is due to a mistake which he is engaged in rectifying at date of initiation of contest. 16-366

232. A contestant who submits proof showing failure to effect reclamation within the statutory period does not thereby acquire the status of an adverse claimant so as to defeat equitable action where the Government on its own motion has examined into the cause of said failure and held the entry intact with a view to its equitable adjudication. 17-255

233. Equitable confirmation in case of failure to submit final proof within the statutory period not defeated by a contest directed against the subsequent entry of another for the same tract. 16-310

234. May be equitably confirmed where expiration on final proof submitted after the expiration of the statutory period and the delay is explained. 14-493

235. Canceled for failure to submit final proof within the statutory life of the entry, will not be reinstated with a view to equitable action, unless it appears that the land was reclaimed within the statutory period, or within a reasonable time thereafter, and sufficient cause for the delay is clearly shown. 27-216

236. May be equitably confirmed when the failure to effect reclamation within the statutory period is due to obstacles that could not be overcome. 6-548, 799; 7-247; 8-573; 9-631; 10-598

237. The period of time covered by a departmental order suspending entries should be excluded from the time accorded by statute for reclamation and final proof. 15-234; 16-166; 24-435

238. A suspended entry does not run during the period of suspension, but it does run from its date to suspension, and then again, as if without interruption, from the date of the order revoking the suspension to the expiration of the term. 20-324

239. During the pendency of a departmental order suspending a desert entry the claimant is not required to proceed with the work of reclamation. 18-420; 19-382

240. Where a township is suspended from all forms of entry for the purpose of resurvey thereof, the time between the date of suspension and the filing in the local office of the new plat of survey should be excluded from the time accorded by statute for the reclamation of land under a desert entry within the township, and the statutory period of the entry extended accordingly. 40-223

241. The departmental rule that excludes from the period allowed for reclamation such time as the entry may be suspended, is within the scope of administrative authority, and not violative of the desert land law. 20-548

242. On the revocation of an order suspending a desert entry, time will not run as against the entryman in the matter of reclamation, in the absence of proper notice to him of said revocation. 21-394, 494; 25-323; 28-497

243. The notice given an entryman of the revocation of an order suspending his, is insufficient if not definite and certain in its terms. 23-240; 25-388

244. Secured by testimony falsely showing reclamation must be canceled, though it may appear that prior to initiation of suit the land was reclaimed by a transferee. 15-5

245. The act of March 3, 1891, amending the act of March 3, 1877, operates to confer upon entrymen under the original act, at their option, the additional time for effecting reclamation provided for in said amendatory act, and an entry occupying such status, on which final proof has not been submitted, is within the provisions of the act of July 26, 1894, extending the time for making final proof and payment. 24-435

246. The provision of section 5, act of June 27, 1906, that the time during which a desert entryman is hindered, delayed, or prevented from making improvements or reclaiming the land by reason of the withdrawal of the land under the reclamation act shall not be computed in determining

the time within which he is required to improve or reclaim, has no application where the entryman is in nowise hindered by such withdrawal from improving and reclaiming according to his original intention, and the only reason for not carrying out the original plan is that the proposed Government scheme may offer a more efficient and economical means of reclamation. 36-175

247. Section 3, act of March 28, 1908, authorizing an extension of time within which entrymen may make proof of reclamation and cultivation, contemplates that unavoidable delay in the construction of the irrigating works by means of which the entryman intends to convey water upon his claim is the only ground upon which its provisions may be invoked; and in the absence of some actual, tangible work in the way of an irrigation system on the claim, a mere intention, or even contract, to obtain water from an irrigation system in the future, in event the practicability of such system be demonstrated by actual test, is not sufficient to warrant the extension authorized by the act. 37-332

248. The construction of an artesian well, with a view to procure water for the reclamation of a desert entry, is a construction of irrigating works within contemplation of section 3, act of March 28, 1908, and failure, after diligent effort, to obtain water by means of such attempted artesian well, without fault on the part of the entryman, is sufficient ground for extension of time as provided by that section. 39-475

249. Section 3, act of March 28, 1908, authorizing an extension of time for the submission of final proof upon desert entries where by reason of unavoidable delay in the construction of the irrigating works the entryman is unable to make proof of reclamation and cultivation within the time fixed by statute, furnishes no authority for an extension of time to enable the entryman to submit proof of annual expenditures. 38-215

250. Where a Government reclamation withdrawal interferes with and results in the abandonment of a private cooperative irrigation enterprise, a desert entryman interested in such enterprise and pre-

vented by the abandonment thereof from continuing his improvements and submitting proof within the time fixed by law is within the act of June 27, 1906, and entitled to an extension of time under its provisions. 38-474

251. The filing of a contest against a desert entry during the pendency of an application for extension of time under the act of March 28, 1908, will not prevent the allowance of such application where the contest affidavit does not charge facts tending to overcome the *prima facie* showing of right to the extension set forth in the application. 39-558

252. The right to an extension of time within which to submit final proof upon a desert entry, accorded by the act of March 28, 1908, is fixed by the act itself, upon a proper showing of facts bringing a case within its provisions, and is not a mere privilege resting in discretion of the commissioner to allow or deny; his discretion under the act being limited to fixing the time or period of the extension. 39-558

(g) Second.

253. Circular of March 27, 1908, under act of March 26, 1908, relating to second desert entries. 36-472

254. Instructions of February 28, 1911, under act of February 3, 1911, relating to second desert entries. 39-524

255. Instructions of May 17, 1912, under act of February 3, 1911, respecting second desert entries. 40-91

256. The act of March 26, 1908, does not authorize second desert entry by one who has received patent on a former entry, notwithstanding the land so patented has become worthless by reason of destruction of the reclamation project upon which irrigation thereof was dependent. 40-96

III. State Selections.

See SURVEY, 261-274.

257. Regulations of November 22, 1894, under section 4, act of August 18, 1894 (Carey Act). 20-440

258. Amended regulations of August 10, 1895. 21-89

259. Regulations of September 20, 1898. 27-635

260. Regulations of January 15, 1902.

31-228

261. Instructions of March 30, 1908, relative to lists of lands patented by States under Carey Act.

36-342

262. Instructions of March 9, 1909, relative to inspection of lands selected under Carey Act.

37-489

263. Regulations of April 9, 1909, governing selections under Carey Act.

37-624

264. Regulations of April 25, 1910, concerning selections and withdrawals under Carey Act.

38-580

265. Regulations concerning the making of proof for desert lands segregated under act of 1894, as amended June 11, 1896.

26-480

266. Instructions governing the extension of time for irrigation and reclamation plants, under section 4 of the act of 1894, as amended by section 3 of the act of March 3, 1901.

37-682

267. A relinquishment by the State of lands included in a contract made under act of 1894, must be executed by the officers designated by the State legislature to manage and dispose of said lands.

24-562

268. In making selections under act of 1894, the burden is upon the State to show that the lands are of the character contemplated by the act.

33-374

269. Under the act of 1894, the departmental regulations, and the terms of the State act, the maps, and lists of selections shown thereby, are properly authenticated by the signature of the chief clerk of the State board of land commissioners.

24-562

270. Under the State statute accepting the terms of the act of 1894, a contract on behalf of the State, with the United States, executed by the commissioner of arid lands for said State, is not valid if not approved by the governor and attorney general of said State (Washington).

25-33

271. A sparse and stunted growth of trees which may exist with little moisture and is frequently found upon arid lands actually unfit, without irrigation, for ordinary agricultural purposes, should not be held as necessarily indicative of the non-desert character of the land, and hence excluding it from selection under the act of 1894.

31-149

272. The provision in the act of June 11, 1896, that patents may issue to the States

when an ample supply of water is actually secured, without regard to settlement and cultivation, is not limited to lands on which liens have been placed under said act, but is applicable to all lands donated by the act of 1894.

26-74

273. Directions for a hearing to determine the character of certain lands in the Burns land district, Oregon, alleged to be desert and selected by the State under the act of 1894.

34-589

274. The department declines to approve the application of the State of Washington for the segregation of certain lands in that State under the act of 1894, and further declines to adopt the suggestion of the State that the Government proceed with the reclamation of the lands, which fall within the irrigable area of a contemplated project under the act of June 17, 1902, and, after reclamation shall have been accomplished, to allow the State the benefits thereof as though performed by it under the former act.

34-453

275. The preference right granted the State by the act of 1894 is not conditioned upon an advance deposit for survey by the State, and where the State has otherwise complied with the provisions of the act its preferred right is in nowise affected by the fact that the survey was made upon the advance deposit of another.

35-640

276. The filing on behalf of a State of an application for the survey of lands under the act of 1894, and the publication of notice thereof, operate as a withdrawal, and all settlements subsequently made are subject to the preference right of the State.

35-640

277. Notice to the local officers of the withdrawal of lands embraced in an application for survey by the State, as provided by the act of 1894, is intended primarily for their information, that proper notation may be made upon their records, and is not essential to protection of the rights of the State.

35-640

278. The right of selection accorded the State by the act of 1894 does not extend to land embraced within a prior adverse settlement claim asserted in due time after survey.

29-590

279. A homestead entry improperly allowed during the period of preferred right accorded the State by the act of 1894, on

land surveyed upon application of the State, will be permitted to stand, as of the date of the expiration of said period, where the State fails to make a valid selection of the land until after the period of preferred right has expired. 30-79

280. Homestead entries and applications made after the expiration of the period of preferred right, and prior to any valid selection by the State, take precedence over such selection when made. 30-79

281. The term "actual settlers" in the Carey Act contemplates persons actually residing on the land. 36-509

282. Under the Carey Act as originally enacted occupancy by an actual settler was one of the conditions precedent to the acquirement of legal title by the State; but under the act as amended June 11, 1896, an actual settler prior to patent is not necessary, though the State can legally dispose of the land, after acquiring title, only to actual settlers; and where it attempts to dispose of the land to other than actual settlers, it subjects the grant to liability to forfeiture for condition broken. 36-509

283. One who settles upon land subsequent to an application by the State to have it surveyed under the act of 1894, and after survey, but during the period of preferred right accorded the State, applies to enter the same, acquires no right as against the State. 30-1

284. A qualified settler who, after the expiration of the period of preferred right of the State, is residing on the land, will be protected as against a subsequent selection by the State, even though he may have failed to assert his claim within three months after the land became subject to entry. 30-1

285. No rights are secured under State selections tendered prior to the filing of the township plat of survey. 30-1, 79

286. The allowance or rejection of an application by a State to select lands under the Carey Act, is wholly within the discretion of the Land Department; and where lands are embraced within a withdrawal made by the Secretary of the Interior under authority of law, they are not subject to any claim of the State under that act. 36-399

287. No complete equitable title vests in a State by approval of a segregation list under the Carey Act; and if subsequent to such approval and prior to final approval of the patent list, lands in the segregation list are classified as coal, the department is without authority, so long as such classification stands, to approve or patent such lands to the State, except in accordance with the act of March 3, 1909. 38-508

(For further decisions under Carey Act, see SURVEY, 261-274.)

DESERTED WIFE.

See CONTEST, 506-511; HOMESTEAD, IV; PREEMPTION, III; TIMBER CULTURE, 220-222.

DEVISEE.

See FINAL PROOF, 474-476; HOMESTEAD, III; PREEMPTION, VI.

DILIGENCE.

See CONTEST, 41-43; MINING CLAIM, 159-172.

1. In ascertaining the fact of cancellation of the entries must be exercised by settlers on abandoned homestead claims. 2-89

2. In land claims the party who takes the initial step, if it is regularly followed up to patent, is deemed to have acquired the better right to the premises. 2-167; 4-582; 9-444; 10-228

3. After filing application and depositing fees and commissions prior to cancellation of a prior entry, failure to enter for six months after cancellation shows want of ordinary diligence. 2-50

DISTRICT OF COLUMBIA.

1. Regulations of March 31, 1894, concerning the disposition of lands in, under the joint resolution of February 16, 1839. 18-285

2. Regulations of March 31, 1894, with respect to disposal of lands in, amended May 9, 1895. 20-435

DISTRICT OFFICERS.

See LAND DEPARTMENT, IV, V.

DITCHES.

See RIGHT OF WAY, V.

DONATION.

I. New Mexico.

II. Oregon and Washington.

I. New Mexico.

1. Provided to secure permanent settlement and occupation of the country.

1-279

2. Claim may be relinquished and taken by the donee either as a homestead or preemption.

1-283

3. Where no certificate has issued the claim can not be docketed in the General Land Office.

1-284

4. Under the act of July 22, 1854, residence and settlement must be contemporaneous, and settlement must have been commenced within the time specified in said act.

1-279, 284; 4-501

5. Residence and cultivation must be in good faith.

1-297

6. Under the New Mexican act selections were required to be made prior to January 1, 1858.

1-279, 284

7. A claim founded upon a settlement made subsequently to January 1, 1858, is invalid in its inception.

2-406, 407, 408; 3-189

8. Where claim is invalid for want of settlement prior to January 1, 1858, but claimant has made *bona fide* improvements, he may be allowed to make preemption or homestead entry.

2-408, 409, 410, 411, 412

9. Where settlement was in fact made in 1853, though claimed as in 1863, the notification may be amended.

2-409

10. The occupancy and improvements of claimant, though not of such character as to entitle him to the land under the donation law, may be protected under the homestead or preemption law.

1-284

11. A relinquishment of, made by a woman, without explanation of her rela-

tionship to the donee, will not be accepted as a basis for cancellation of the claim.

3-94

II. Oregon and Washington.

12. Circular of April 8, 1895, under the act of July 26, 1894.

20-290

13. No entry allowed until after public surveys are made.

2-446

14. Right to the land is not perfect and complete until the claimant has performed all the conditions imposed by law; prior thereto he has but a possessory right.

1-279; 2-437, 441, 451; 3-471

15. Claim under which there has been due compliance with law constitutes an appropriation of the land.

19-470

16. A claimant who has not fully complied with the terms of the law has no title that can be conveyed by devise.

16-490

17. Until patent issues the department has jurisdiction to determine whether donee has complied with the law.

15-511

18. Heirs of donee must show compliance with the law on the part of the ancestor.

3-469

19. The act of July 6, 1894, providing for the completion of donation claims, treated lands covered by donation notifications as reserved thereby from other disposition.

23-569

20. Filing notification operates to segregate the land.

1-303

21. Of a married man embracing more than 320 acres is not void, but voidable.

24 4

22. Consideration of the provisions in the several donation acts relating to notification.

2 440

23. Rights of *bona fide* settlers who failed in the matter of filing notification protected by the act of 1864.

1-305

24. The act of 1850 required residence for four consecutive years, provided checks against speculation, and avoids a sale before patent; act of 1853 permitted commutation of time into money where settlement had been followed by two years' residence and survey been made; act of 1854 reduced to one year the period of occupancy authorizing a purchase, but prohibited a sale except where there had been four years' residence.

2-443

25. The act of June 25, 1864, was designed to place a donation claimant upon the same footing as a claimant under the preemption law; that is, to give him a preferred right to the land until the time fixed for filing his notice, and afterwards, if no adverse right intervened, to extend the preferred right to the time at which he actually filed the notice. 2-443

26. Failure to give notice and to prove settlement as required by sections 6 and 7, act of 1850, defeats the claim. 2-446

27. Four years' residence requisite to secure title by occupation. 3-59

28. The acts of 1853 and 1854 grant the privilege of discontinuing the occupation required by the act of 1850 and making a payment in lieu thereof only to those whose claims were surveyed while their residence and cultivation were incomplete. 2-438

29. If the husband could not have become a resident before December 1, 1850, or any time thereafter, no right was conferred upon the widow by section 8 of the act of 1853. 1-296

30. Improvement without residence and subsequent removal to another part of the State and authorized sale of improvements is abandonment. 2-427

31. Where settler has been driven away by hostile Indians he must return to the land when the cause of his absence ceases; otherwise the absence is abandonment. 2-448

32. A sale of the claim prior to obtaining a complete right is an act of abandonment and a forfeiture of any privilege the claimant might have had to perfect it subsequently by a cash payment. 2-438, 451

33. Where claimant's affidavit asking a hearing against charges of abandonment shows noncompliance with requirements, claim will be canceled without hearing. 2-445

34. Failure of heirs to make final proof may be held to constitute abandonment. 3-469

35. Section 8, act of September 27, 1850, prescribes no limit as to the time within which the heirs shall file proof of compliance with law up to the date of settler's death; and the failure of the widow to

submit such proof for a term of years does not defeat her right to perfect title. 16-490

36. On the death of a qualified claimant who has complied with all the requirements of the law in the initiation of his claim, and subsequent maintenance thereof, up to the date of his death, the heirs of such claimant become qualified grantees irrespective of any question as to their citizenship. 23-166

37. Under section 8, act of September 27, 1850, proof of compliance with law up to the date of the donee's death is all that is required in the matter of final proof on the part of the heirs, and it is not material in such case by whom said proof is submitted. 23-166

38. A plea of equitable estoppel set up by intervening adverse claimants, as against the rights of heirs under a, on account of their alleged failure to assert their rights in due season, can not be considered by the department, if it finds that under the donation law said heirs are entitled to a patent; and especially is the department limited to such course, in view of the fact that said law prescribes no limit of time within which final proof may be made by the claimant or his heirs at law. 23-166

39. The act of July 26, 1894, not applicable to a, pending before the Land Department at the passage of said act, and in which final proof had been submitted prior thereto. 23-166

40. The settler is the actor in securing the grant, who alone represents the claim until the final proofs are made by him; his acts are the acts of his wife, his neglect her neglect, and his abandonment her abandonment. 2-80

41. On the death of claimant certificate should issue in the name of the heirs at law. 1-291, 304

42. There is no authority for partitioning the land among the donees in the event of the claimant's death. 1-293

43. Where an alien claimant, having declared his intention to become a citizen, died before naturalization, his possessory right descended to his heirs and patent properly issued to them. 2-439

44. On the death of the settler a new grant is made by the statute to the heirs

at law, including the widow if there is one, and proof of compliance with the law up to the time of his death is sufficient.

1-293

45. Though the claimant may be entitled at date of settlement to claim 320 acres, as a married man, if his wife dies before the period of occupancy has been completed, certificate can issue for but 160 acres.

7-545

46. Where the claimant, as a married man, claimed 320 acres he may be allowed to relinquish so as to approximate 160 acres and retain his improvements in event his wife dies before the period of occupancy has been completed.

7-545

47. The Land Office should render decision on each application under section 5 of the act of July 17, 1854, such decision to be final in the absence of appeal.

4-103

48. On approval the case to be sent to the department for final action.

4-103

49. Under section 5, act of July 17, 1854, orphans left within the Territory are entitled to a quarter section of land if the parent at the time of death was qualified to initiate a claim under the donation law.

9-234

50. The word "orphan," in section 5, act of July 17, 1854, means a child under 21, bereft of both parents on or before the date when the donation acts expired.

6-596

51. Children not entitled under the fifth section of the act of July 17, 1854, if either or both parents have received a.

5-427

52. There is no right in the parents or their children (as orphan heirs) to initiate a claim if the death of the parents occurs before they reach the State (Oregon).

16-202

53. The act of August 6, 1888, confirms claims that were "set off to orphans of claimants," regardless of the qualifications of the original claimants, if at the date of said act there is no adverse claim and there has been due occupation and cultivation.

13-51

54. An adverse right existing at the date of the act of August 6, 1888, defeats the confirmation of a claim thereunder.

16-202

55. The claim of a widow who showed residence and cultivation for four years is not recognized as within section 5, act of September 27, 1850, the same being limited to "white male citizens."

3-74

56. Amendment of claim, on completion of residence, to include other land not permitted.

1-303

57. Patent to but one claim can issue to any person in his own right.

1-292

58. Patent can not issue for land within the formal claim of another, though such action is sought as the result of an agreement between the parties.

1-294

59. On the proper relinquishment of the tract erroneously included within the patent a reissue will be made in accordance with the official survey.

3-139

60. Patent will not be reissued changing boundary lines and granting a greater quantity of land on the showing made.

3-15

DRAINAGE.

1. Instructions of February 29, 1912, relating to drainage of swamp and overflowed lands in Minnesota under act of May 20, 1908.

40-438

DURESS.

1. Actual violence not necessary to constitute.

6-616; 7-249

2. Threats to constitute, must be such as are calculated to operate on a person of ordinary firmness in such a manner as to inspire a just fear of the loss of life or great bodily injury.

9-22; 27-555

3. Peaceably building a house within 25 feet of another (both near a spring) is not in itself an act of intimidation.

2-630

4. A deed executed under duress treated as null and void.

2-86

5. Judicial restraint does not interrupt the continuity of residence.

5-6;

7-532; 15-550

6. If threats of personal violence are alleged as an excuse for noncompliance with law, it should appear that there was reasonable ground to fear personal injury.

14-65; 22-280

7. By judicial restraint can not be successfully pleaded for reinstatement of an

entry canceled for failure to submit final proof within the statutory period where an intervening adverse claim exists.

15-550

8. A plea of, set up to avoid the withdrawal of a contest can not be accepted where it appears that contestant subsequently ratifies the act of withdrawal in the absence of any threats or fears of violence.

17-373

9. In determining whether a plea of, is good, the age and physical condition of the party setting up such plea may properly be considered.

26-616

EMINENT DOMAIN.

1. In the exercise of, a State may condemn for public purposes, under proper procedure, lands embraced within Indian allotments.

19-24

ENTRY.

See ALIENATION; APPLICATION; COAL LAND, II; CONTESTANT, II; DESERT LAND, II; EQUITABLE ADJUDICATION; FINAL PROOF; HOMESTEAD; MINING CLAIM, XI; PREEMPTION; RECLAMATION, III; RELINQUISHMENT; TIMBER CULTURE; WORDS AND PHRASES CONSTRUED, 16-17.

I. Generally.

II. Effect of

III. Approximation.

IV. Joint.

V. Amendment.

VI. Second.

VII. Reinstatement.

VIII. Subject to Preference Right

IX. Land Reserved from.

X. Cancellation.

XI. By Employé of the General Land Office.

I. Generally.

1. Manner of making, under homestead, preemption, and timber-culture laws. General circular of March 20, 1883.

1-656

2. On land returned as swamp. Circular of December 13, 1886.

5-279

3. Regulations of April 27, 1891, under the first six sections of the act of March 3, 1891, with a copy of said act.

12-405

4. Circular of March 26, 1902, under act of March 11, 1902, relative to officers before whom affidavits, proofs, and oaths may be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts.

31-274

5. The limitation in acreage prescribed by the act of August 30, 1890, applies equally to all the land laws and restricts the applicant to 320 acres in the aggregate.

12-81

6. Of land, valuable only for the timber and stone thereon, should not be included in the maximum amount of lands that may be acquired under the limitation imposed by the act of August 30, 1890, as construed by the act of March 3, 1891. (See 33-539.)

19-299

7. The provisions of the act of August 30, 1890, are prospective in character.

12-81

8. (For further decisions under the act of August 30, 1890, see PUBLIC LAND, 43-55.)

9. Papers pertaining to, belong to the permanent files of the General Land Office.

5-258

10. Is made on land subject thereto when the application, affidavit, and fees are placed in the hands of the proper officer.

4-463; 8-226

11. Not effected by application and preliminary affidavit unaccompanied by the legal fees.

8-224

12. Allowed in accordance with departmental rulings should not be canceled.

5-261, 292, 641; 6-225; 7-75;

8-399, 535; 9-622; 10-190

13. Must remain of record until relinquished or canceled (on contest or failure to make final proof) in regular proceedings.

11-91

14. Failure to properly note of record in the local office does not defeat the effect of an entry.

14-242

15. The right of one who duly enters a tract of land, and pays the fees and commissions required by law, can not be defeated by the fact that the records of the local office fail to show the entry.

28-335

16. Absence of record in the General Land Office showing allowance of, will

not defeat rights secured by the submission of proof and issuance of final receipt.

14-349; 16-187

17. Right to make, not considered in the absence of an application for specific tract.

4-310; 7-254; 9-194

18. Must stand in the true name of the entryman.

6-329

19. Not invalid because allowed outside of office hours.

6-1

20. It is not invalid because allowed by the receiver, in the absence of the register, where both offices are filled at such time, and the register on his return approves the action of the receiver.

28-8

21. Local officers should use all means of knowledge at command in ascertaining the validity of an entry.

3-222

22. Local officers to consider objections to an entry.

3-334

23. Strict enforcement of the law with reference to, in order to prevent abuses.

3-152

24. The Secretary has no authority to enter into any agreement providing that an entry of public lands may be consummated in any manner or at any time other than as provided by the law under which such entry is made.

34-351

25. Should not be made for land under a subdivisional description not shown by the public surveys.

16-424

26. By contestant of a homestead entry may be for part of the land and contiguous land.

2-289

27. By contestant of a timber-culture entry is restricted to land in contest unless less than 160 acres, when contiguous land may be included.

2-289

28. Covering tracts of land upon the opposite side of a meandered stream, allowed in accordance with existing practice, will not be disturbed.

5-641;

8-62; 14-591

29. The rule now followed, with respect to the noncontiguity of tracts lying on both sides of a meandered slough, will not be applied to a tract surveyed and entered under a practice that authorized a subdivision of such description and the entry thereof.

20-230

30. Should not be allowed for land on both sides of an existing meandered stream.

12-73; 15-98, 342

31. Of lands lying on both sides of a meandered stream will not be disturbed where it is shown by the records of survey that such stream should not have been meandered.

12-556; 21-7

32. Canceled in part on account of embracing land on both sides of a meandered stream, may be reinstated, in the absence of any adverse claim, it appearing that said stream is not in fact meandered within the meaning of the law and regulations.

19-463

33. May stand intact though it includes tracts that according to the public survey are noncontiguous, by reason of their lying on both sides of a meandered lake, where it appears that said tracts in fact form a fractional quarter section, and where the rights of the entryman are entitled to equitable consideration.

19-297

34. May stand intact as to the agricultural tracts, though they are rendered noncontiguous by a segregation survey made necessary by a mineral discovery after the original entry was made.

9-143

35. Embracing tracts that are noncontiguous by reason of a prior mining claim can not be perfected as to any part thereof where residence and improvements have been confined to a small tract not contiguous to the main body of land.

18-141

36. When found to embrace noncontiguous tracts the entryman should be called upon to elect which tract he will relinquish; and if the entryman fails to take action the entry may be canceled as to such tracts as may be deemed proper, having due regard to interests shown by incumbrancers.

24-305

37. Embracing noncontiguous tracts may be referred to the board of equitable adjudication where the noncontiguity is caused by the cancellation of a part of the entry on account of the prior adverse right of another, and the original entry is made in ignorance of said adverse right.

15-119; 23-389

38. Tracts of land cornering on each other are not within the rule of contiguity.

5-683; 6-621; 11-367; 33-560

39. There is no law authorizing, of submerged lands lying within a navigable stream.

19-505

40. The mere fact that a tract of land adjoins the end of a patented lode claim will not prevent appropriation thereof under the nonmineral public land laws; but in such case a higher degree of proof will be necessary to establish its nonmineral character than is ordinarily required.

40-84

41. Allowed in accordance with the plat in the local office may stand with a view to approval when the plat in the General Land Office has been corrected.

15-395

42. Made in the interest of another is fraudulent and must be canceled.

23-140

43. Secured through fraudulent and speculative contest is invalid.

10-402

44. Rights under, lost through failure to act in good faith.

9-527

45. Whether fraudulent or speculative, not determined by a fixed rule.

5-313

46. Legality of, will be considered by the department when before it for action, though the character of the entry, when made, was known to the General Land Office.

6-371

47. A specific right of, accorded by departmental decision must be exercised within the period designated in the absence of good reason shown for delay.

13-205

48. Where by the decision of the General Land Office the right to enter a certain tract is recognized, but no time is fixed in said decision within which such entry shall be made, the right so allowed may be lost if not asserted within a reasonable time.

26-268

49. In a case of conflict arising through a change of subdivisional descriptions, caused by a resurvey and the local office taking action without reference thereto, the rights of the prior entryman are superior.

13-219

50. Right of, not defeated by the adverse claim of one holding under a quit-claim deed from the State.

12-519

51. Of land relinquished will not be questioned, so far as the status of the land at the date of the entry is concerned, where such relinquishment is shown, *prima facie*, to have been executed by the only qualified heir, and the statutory life of the entry thus relinquished has expired.

22-415

52. Made by a contestant, on a relinquishment, during the pendency of a second contest charging the disqualification of the original entryman and collusion with the first contestant, may be permitted to stand, where it appears that the allegations in said contest are not supported by the evidence.

29-211

53. By the issuance of patent upon an entry the entry is merged in the patent, and upon cancellation of the patent the entry can not be regarded as still in force.

36-279

II. Effect of.

54. Effect of, relates back to the proper initial steps.

1-461

55. Is a contract between the Government and the entryman, and until all the requisites of an entry have been met no contract exists and the applicant can acquire no vested right to the land which will prevent a withdrawal thereof by the Government.

34-380, 653; 36-280

56. Reserves the land from the operation of an Executive order creating an Indian reservation.

14-589

57. Allowance of, segregates the land, even though the entry may not be made of record, and the failure of the local officers to place the entry of record will not affect the rights of the entryman.

11-356

58. In the case of, that is not of record in the local office, the land covered thereby must be held as open to settlement and appropriations subject only to whatever rights may exist on the part of such entryman.

10-59; 22-680

59. A *prima facie* valid entry of record operates as a reservation of the land.

1-362; 2-98; 3-169, 217, 229;

4-210, 392, 441, 457, 586;

5-174; 6-153, 425; 8-243, 528

60. Appropriates the tract against one alleging a superior claim until his rights have been finally determined.

2-34

61. Homestead or timber culture, appropriates the land absolutely.

1-30,

362, 449; 3-218; 7-140

62. Regularly made, though not for land subject thereto, while of record segregates the land.

6-819

63. *Prima facie* valid (made by married woman) while of record reserves the land from other disposition.

16-130

64. Valid entry segregates the tract, and it is not again subject to claim (preemption) until the entry is lawfully canceled.

2-294

65. *Prima facie* valid soldiers' additional, while of record, segregates the land and precludes the allowance of a preemption filing therefor.

13-297

66. Made by an alien is not void, but voidable, and segregates the land included therein from the public domain while of record.

4-564; 12-345; 22-124

67. Made by a person previously adjudged insane is void *ab initio*.

13-541

68. A voidable entry while of record is an appropriation of the land.

3-446,

506; 5-118

69. Exceeding 160 acres is voidable only, and while of record is an appropriation of the land.

4-92, 441

70. Void, no segregation of the land.

4-449

71. If void, will not exclude the land from the incipient appropriation of a legal applicant.

3-181

72. Void, no bar to the legal application of the person who made such entry.

4-467

73. Is notice of the land claimed, and possession must be limited thereby as against subsequent settlers.

1-457

74. When attacked, will be presumed valid.

4-62, 80; 9-538

75. Made under section 2, act of May 28, 1880, on payment of one-fourth of the purchase price and submission of proof, operates as a segregation of the land, subject to forfeiture if the subsequent payments are not made.

13-524

76. An entry or selection of public lands which is not so far perfected as to confer an equitable title or vested right does not take the land out of the operation of the mining laws; but, ordinarily, where an entry or selection is received and recognized by the local officers, it will, while pending, prevent the receipt or recognition of other applications for the same land.

31-352

77. The allowance of an entry under general laws providing for the disposal of the public lands, the final approval thereof for patenting, and the issue of patent thereon, is an adjudication by the Land Department that the lands entered are of the character and class subject to

such entry, and necessarily determines that they had not been previously granted or otherwise appropriated.

30-626

III. Approximation.

78. A quarter section is, under the homestead laws, 160 acres, and in fractional sections an entry must approximate 160 acres as nearly as practicable. (See 6-797.)

2-129; 4-92, 441

79. One quarter, approximately, of the number of acres in any section, may be entered under the timber-culture act.

13-53

80. Timber-culture entry may embrace a technical quarter section without reference to its relation to the entire section.

11-378

81. May embrace a "quarter section," platted as such, regardless of the actual area. (See 37-330.)

6-797;

7-20; 10-116; 13-520

82. When the excess above 160 acres is less than the deficiency would be if the subdivision were excluded, it may be included in a homestead entry; where it is greater it must be excluded. (See 6-797.)

2-88; 3-459

83. Embracing tracts in two or more quarter sections must approximate 160 acres as nearly as practicable without requiring a division of the smallest legal subdivision.

8-205

84. The rule of approximation will be applied to a homestead entry that embraces fractional subdivisions in two sections.

17-205

85. Embracing tracts in different quarter sections is limited in acreage and must approximate 160 acres.

7-20;

10-62, 524, 587

86. Rule of approximation applied only where the entry is of parts of different quarter sections.

6-797

87. Approximation required though the land had passed to a purchaser for a valuable consideration.

5-154

88. Exception to the rule requiring approximation in acreage made in case of settlement before survey with valuable improvements on each subdivision.

5-295, 298

89. Exceptions to the rule requiring approximation recognized where valuable

improvements would be disturbed or other like injury follow the relinquishment of a subdivision. 10-587

90. Containing an excess over 160 acres may stand where it approximates such area as nearly as may be without destroying the contiguity of the tracts embraced therein. 12-356

91. Rule of approximation 'will not be enforced where it operates to deprive the entryman of his improvements and the difference between the excess and the deficiency is but slight. 14-222; 27-78, 305

92. Rule requiring approximation waived in case of settlement before survey with valuable improvements on each subdivision and noncultivable land falling within the claim on survey. 5-631

93. An additional, of a contiguous subdivision under section 5, act of March 2, 1889, is not defeated by excessive acreage if the amount taken by both entries approximates 160 acres, as nearly as may be, without loss of the improvements or destroying the contiguity of the tracts entered. 13-610

94. May stand as made where the difference between the excess and the deficiency that would be caused by approximation is slight. 8-79

95. Allowed in violation of the rule of approximation segregates the land covered thereby, but is subject to attack. 8-205

96. Approximation not required under a resurvey where the entry as made under the original survey was not in violation of the rule. 15-449

IV. Joint.

97. Final proof must be submitted before the award of joint. 6-826

98. Joint entry only allowed where the boundary of the prior location excludes a portion of a legal subdivision. 1-414

99. Joint, allowed where settlers prior to survey have improvements on the same legal subdivisions. 6-138, 826

100. A joint, can not be allowed where there is but one residence and set of improvements maintained and occupied in common by the parties, with the intention to take separate tracts when the land is open to entry. 19-236

101. Joint, not determined by the amount or character of the improvements. 6-138

102. Joint, may be allowed in case of conflicting settlements prior to survey. 3-609; 4-520; 5-605; 10-234; 13-335

103. Joint, not allowed unless the settlement was prior to the survey in the field. 8-536

104. Where settlement preceded survey and the parties had recognized a boundary line as indicating their possessory rights, joint entry was allowed. 4-27, 230

105. Joint entry allowed in case of conflicting homestead settlements where there is an agreed boundary line. 2-104, 150, 585

106. Joint entry not allowed in case of conflicting homestead settlements prior to survey. 1-414

107. Joint, not allowed for land settled upon after survey. 4-410

108. Under an award of joint entry the parties are not authorized to divide equally the 40 acres in dispute and enter the same in accordance with such partition. 7-3

109. If either party refuse to make, the other may enter according to his filing. 4-231

110. An alien who settles prior to survey in the field and files declaration of intention to become a citizen before approval of the survey is entitled to make joint. 8-536

111. Conflicting settlement rights acquired prior to survey may be adjusted by allowing either settler to enter the entire tract, on condition that he tender the other a written agreement to convey to him that portion of the land covered by his rightful occupation. 6-826; 7-3; 8-536; 10-234; 13-19, 335

112. Where two settlers prior to survey agree as to a line separating their claims, and after survey it is found that their improvements are on the same subdivision, the Land Department may, under its general and supervisory power, permit them to make joint entry of the land or allow either to make entry of the tract on condition that after completion of title he convey to the other the part set off to him by the agreed line. 37-141

113. A written agreement to convey to the other the land covered by his occupa-

tion, is sufficiently explicit if it follows the departmental award. 13-19, 335

114. In case of conflicting settlement rights, arising through a mistake as to the exact location of a boundary line, an equitable apportionment of a tract may be made so as to give each party his improvements, though one of them settled after survey. 18-297

115. Joint, allowed under section 2274, R. S., in case of refusal to enter under an agreement to convey. 7-3

116. The extent of joint, allowed by section 7, act of July 23, 1866, is measured by the joint occupancy of the parties, and only includes such legal subdivisions as are required to adjust their coterminous boundaries. 6-434

117. In the consummation of joint, under section 7, act of July 23, 1866, each party is entitled to enter that portion of the land defined by his original purchase and separate occupation. 6-434

V. Amendment.

118. Regulations with respect to amendment. 8-187

119. Circular of April 22, 1909, governing amendments. 37-655

120. Instructions of February 29, 1908, establishing rules governing amendments of original entries. 36-287

121. An application to amend a homestead entry, as well as all affidavits filed in support thereof, should be executed before some officer designated by section 2294, R. S., and the acts of March 11, 1902, and March 4, 1904, amending that section. 34-680

122. The right to amendment lies within the discretion of the officers charged with the disposition of the public land. 3-157

123. The rule permitting amendment is liberally construed by the department, particularly where through ignorance or misinformation the entryman is misled as to his rights, and no adverse claim has intervened. 27-389

124. Amendment not allowed except for good reasons shown. 4-365; 7-298

125. There is no express statutory authority for the amendment of entries where final certificate has not issued, but amendment may be allowed by the Secre-

tary in such cases, on equitable grounds, by virtue of the general authority vested in him by section 441 of the Revised Statutes to supervise the disposal of the public lands. 36-446

126. The act of February 24, 1909, making it mandatory upon the Land Department to allow amendments of entries in certain cases, does not limit or take away from the Commissioner or the Secretary the discretionary power theretofore vested in and exercised by them to permit amendment of entries in other proper cases. 40-434

127. The act of February 24, 1909, is limited to cases of mistake in description at the time of making an entry whereby the entryman's intent was defeated, but is mandatory and obliges the Land Department to allow change of entry in such cases. 40-434

128. Where amendment is authorized, 60 days only are allowed for making it. 2-206

129. Amendment not allowed in the local office. 3-471

130. An application under section 2372, R. S., for the amendment of a cash entry must be supported by the affidavit of the original purchaser or his legal representative. 19-112

131. The written opinion of the local officers, as provided in section 2372, R. S., may be required, out of due caution, in case of application for amendment of timber culture. 6-644; 7-364

132. In applications for amendment the written opinion of the local officers, as provided in section 2372, R. S., may be properly required in entries not expressly included in the statute. 7-155

133. The right under section 2372, R. S., to amend an entry "where the certificate of the original purchaser has not been assigned, or his right in any way transferred," is not defeated by the entryman's sale of the land where he subsequently reacquires title. 27-252

134. Can not be amended under section 2372, R. S., if the certificate of the original purchaser has been assigned, or his right transferred. 23-389

135. An intervening adverse claim of record bars the allowance of an amendment under section 2372, R. S. 23-389

136. The provisions of section 2372 authorizing a cash entryman who by mistake in description made entry of a tract not intended to be entered "to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if unsold, or, if sold, to any other tract liable to entry," have no application to homestead entries. 36-180

137. While the Land Department has applied the principle of section 2372 to homestead and other noncash entries and permitted amendment to carry out the original intention, it has never been extended to permit an entryman to change his entry from the tract actually entered to one not originally intended to be entered. 36-180

138. If the evidence in support of an application for amendment is not satisfactory, the case may be remanded for further showing under the rule requiring a written opinion from the local officers. 7-155

139. Distinction between amendment and second entry. 6-505

140. On application to amend it should be shown that the tract covered by the proposed amendment is the same as that originally selected after personal inspection and that the error was made through no fault of the entryman. 3-362; 7-219. 363

141. Application for amendment should show what efforts were made to learn the true description of the land and how the mistake occurred. 7-44

142. Amendment allowed on due showing of such care as a man of ordinary prudence would exercise. 1-457; 6-355, 785

143. May be amended so as to take the lands intended to be entered where the mistake is satisfactorily explained. 5-534, 583; 6-505, 644, 785; 7-155

144. May be so amended as to include a tract covered by the applicant's settlement and originally intended to be entered, but not so taken on account of misinformation as to its true status. 18-213

145. May be amended to include an adjacent tract that was not surveyed at the date of said entry, but was covered by the original settlement claim of the homesteader. 19-177

146. May be so amended as to include land originally selected by the entryman,

and improved, but not embraced within his entry for the reason that it was not then surveyed, and he believed that he would be entitled to make an additional entry thereof when surveyed. 19-43

147. A homesteader who enters 120 acres, and contests an, embracing an adjacent 40-acre tract, may, in the event of success, be permitted to so amend as to include said 40 acres, where by such action he secures the land originally intended to be entered. 26-663

148. May be amended to embrace an additional adjacent tract that was at the date of the original entry included in the existing entry of another, where such amendment corresponds with the original settlement claim, and no adverse claim exists. 26-69

149. A settler who makes entry for part of the land covered by his settlement claim, and contests a prior entry covering the remainder, may be permitted to amend his entry, so as to include the whole of his original claim, on the successful termination of his contest. 25-276

150. The right of a party to change so as to embrace other lands, on the ground that his entry, through an erroneous survey, does not cover the land intended to be taken, can not be recognized, where the entry was made with knowledge of the facts, carried to patent, and adverse rights have intervened that, by the record, are not in conflict with said entry. 20-124

151. Application for amendment based on the ground that the desired tract was not subject to appropriation at date of original application, not granted. 5-534; 7-261; 10-419

152. Where at the time of making a homestead entry the entryman was prevented from taking the technical quarter section desired by him because of an existing entry covering part thereof, but made entry of the remainder of such quarter section together with sufficient adjoining land to make up 160 acres, he may, upon removal of the obstructing entry, be permitted to adjust his entry to the technical quarter section in accordance with his original desire, provided his application to so amend is filed within

one year from the date of his original entry. 40-434

153. The right to amend, so as to include a tract omitted in the belief that it was not public land, will not be recognized, where no effort is made to ascertain the true status of the land on the records of the local office. 21-556

154. The right of amendment can not be recognized on behalf of one who makes an entry, and takes less than he might have taken, had he informed himself of the status of the records of the local office. 20-186

155. Amendment not authorized unless it appears that the record fails to express the original intention of the entryman. 3-362; 9-376

156. May be amended in accordance with the original application where the amount was improperly restricted by the local office. 8-58

157. Can not be amended to embrace an additional tract where the entry as originally made covers the land intended to be taken. 15-548

158. Can not be amended for land not intended to be originally entered, and the repeal of the timber-culture act precludes a second entry embracing said tract. 14-632

159. On amendment, may be allowed for 160 acres where the first, through mistake, covered but 80. 7-363

160. Amendment or new entry allowed in case of noncontiguous tracts. 4-33

161. By way of, an entry as made through error of local office allowed to stand, though not for land originally applied for. 4-112

162. Amendment allowed where the error arose through the fault of the local office. 4-112

163. May be so amended, in the absence of adverse claim, as to avoid conflict with the subsequent entry of another, though taking land not originally applied for, where good faith is manifest and the parties were misled by error of the local office. 16-171

164. Defect in, occurring through ignorance may be cured. 1-46

165. Defect in voidable, may be cured prior to the intervention of adverse claim. 5-248, 394; 6-425; 8-1; 10-61

166. Amendment to correspond with settlement allowed. 1-159; 3-157, 413; 7-159; 21-372

167. May be amended to embrace the land covered by the actual settlement and improvements of the entryman; and such right is superior to intervening adverse claims made with full knowledge of the facts. 7-387; 27-237, 522

168. The right to change from one tract to another can not be allowed in the presence of an intervening adverse right, even though the applicant may have been the prior settler on the tract thus applied for. (See 25-526.) 22-585

169. May be amended to correspond with settlement, as against an intervening entryman, if priority of settlement is shown by the applicant, and it does not appear that he is estopped by his own acts from setting up his right as against the adverse claimant. 24-135; 25-526

170. The granting of an application to amend rests largely in the discretion of the Land Department, and where, during the pendency of the application, the relation of the applicant, or of another, to the land has become such as to make the allowance of the amendment manifestly inequitable, it will be denied. 28-387

171. Right of amendment defeated by an intervening adverse claim. 2-38, 577; 7-428; 16-313, 424

172. Where an entryman fails to secure the land selected by him, and a part of the lands intended to be taken is included in the intervening entry of another, he may be permitted to amend by substituting for the tracts entered so much of the lands intended to be taken as remains open to entry, and make up the remainder from adjacent unappropriated land. 27-17

173. Amendment of timber culture, governed by the same rule as that under which homestead entries are amended. 6-355

174. Amendment is an *ex parte* proceeding after priorities have been determined. 9-455

175. Amendment not granted in the absence of good faith. 1-456

176. An amended entry founded on a misrepresentation of the facts should be canceled. 2-576

177. Application for amendment does not excuse failure to comply with the law.

5-349

178. On application to amend, a mortgagee may submit evidence showing that the final proof did in fact apply to the land covered by the claimant's settlement and not that embraced within the final certificate.

6-834

179. There is no authority for the amendment of a patented, for the benefit of a transferee.

21-37

180. The right to amend so as to include other land can not be exercised by one holding as transferee.

21-61

181. Allowed for adjacent land whereon the entryman had accidentally cut timber.

2-808

182. Amendment allowed as against an adverse occupant who takes forcible possession with full knowledge of the claimant's right.

11-394

183. Where one enters a tract by mistake and intentionally settles on and improves another tract prior to act of May 14, 1880, he must amend his entry before intervention of a valid adverse right.

2-575

184. Where settler entered the wrong tract by mistake and failed to reside on either tract by reason of his wife's sickness, he may amend to embrace the tract originally selected if no adverse rights have meanwhile attached to it.

2-170

185. The heir of a deceased homesteader can not secure an amendment of the original by a new entry under section 2, act of March 2, 1889.

16-350

186. Allowed after contest commenced where the tract was by mistake entered as an original instead of an adjoining farm homestead.

2-38

187. Pending applications for amendment should be adjudicated on their merits and under the practice heretofore prevailing.

7-155

188. On allowance of amendment after patent, reconveyance of the land improperly patented is required.

8-303

189. An application to amend should not be allowed without a hearing, where the entry as amended conflicts with the intervening entry of another.

20-41

190. An application to amend an entry does not in itself operate to render said

entry void from the date of such application, or release the lands covered thereby from appropriation.

27-62

VI. Second.

For second homestead entries, see **HOME-STEAD, VI**; for second desert entries, see **DESERT LAND, II, g**.

191. Right to make second, not considered without application for specific tract.

4-310, 451; 7-254; 33-538

192. Official certificate of the register as to truthfulness of applicant may be accepted in lieu of the corroboratory affidavit required in the case of an application to make second, where the failure to furnish such affidavit is satisfactorily explained.

24-16

193. The right to make second, will not be considered in the absence of an application to enter in due form.

14-564;

33-538

194. The right to make second, only allowed after careful scrutiny.

3-161

195. Second, allowed prior to actual cancellation of the first, though irregular, may stand, in the absence of other objection.

23-440

196. On allowance of second, the first must be relinquished.

8-429

197. On allowance of second, the entryman should be required to state under oath that the relinquishment of the first is not for the benefit of another.

8-507

198. The right to make a second will not be accorded to one who relinquishes his prior entry on account of a money consideration or its equivalent.

23-87

199. Made in good faith for 160 acres, when the entryman was entitled to but 80, is illegal only as to the excess, and the entryman may be allowed to retain the 80 on which his improvements are situated, and relinquish the remainder.

28-11

190. An application for lands not intended to be taken under the original entry is for the privilege of making a second entry and not for the right of amendment.

9-207

191. Second, allowed under the same principle that governs the allowance of a second filing.

6-290, 362

192. Failure to exercise the right once accorded to make the second, will, in the absence of explanation, preclude favorable action on a subsequent application of a similar character. 9-383

193. Second, not allowed in the absence of due care in selecting and entering the land desired. 6-353

194. Second, may not be made by one who relinquishes the first because it does not cover the land selected and fails to show that the alleged error can not be corrected. 14-564

195. Right to make second, recognized on relinquishment of the first, which was illegal because of conflict. 1-45

196. Second, allowed where the first failed through a mistake of fact as to the character and identity of a prior record claim. 6-362

197. Second, allowed for the same land under changed departmental rulings affecting the status of the tract. 4-249

198. Second, not allowed, though first was relinquished on erroneous advice of local office. 4-188

199. A second, under which the entryman has shown due compliance with law, may be permitted to pass to patent, where the first was relinquished on erroneous advice, and without compensation, and the second was allowed by the local office with full knowledge of the facts. 29-305

200. Second, allowed where the first, through no fault of claimant, can not be carried to patent. 6-353, 505, 645

201. Right to make second, recognized where the first, through no fault of the entryman, was not for the land intended to be taken. 8-429; 24-16

202. Second, allowed where the first, through no fault of the entryman, did not cover the land intended and amendment is barred by an adverse claim. 8-239

203. The right to make second, accorded when the first, through no fault of the entryman, was made for land covered by a prior *bona fide* preemption claim. 8-98; 10-9

204. The right to make a second, may be properly recognized, where the first, through no fault of the claimant, was defeated by an intervening adverse claim. 18-145

• 205. The right to make a second, recognized where the first, made in good faith, was abandoned on account of conflict with the *bona fide* preemption claim of another. 8-100

206. The right to make a second, may be accorded to one who in good faith relinquishes the first on account of an adverse claim asserted to the land included therein. 24-531

207. Second, allowed where the first, for equitable reasons, was relinquished on account of conflict with the prior-settlement right of a preemptor who was in default in the matter of submitting proof. 2-102; 8-131

208. Where an amendment would be allowed in accordance with the original intention of the applicant, but for the existence of an intervening adverse claim, the right to make entry has not been exhausted. 6-505

209. When it appears that an entry fails because of the entryman's negligence in the matter of ascertaining prior adverse rights, he will not be allowed to make a second, if at the date of his application for such privilege there is a qualified adverse claimant for the land applied for. 23-87

210. Second, will not be allowed to one who has perfected title under the first; and such an entryman will not be heard to allege that the first entry was in fact illegal and fraudulent, and hence no bar to the second. 11-507

211. The right to make second, for same tract denied where the first was made while claiming other land as a preemptor, and commutation proof was submitted under the first, pending application to make the second. 7-215

212. Right to reenter same tract where the original entry was canceled for invalidity may be considered in the absence of intervening adverse rights. 6-831

213. Right to relinquish invalid, and make new entry of same tract defeated by the preference right of a successful contestant. 6-831

214. Right to make second, awarded on the assumption that no adverse claim exists, will not defeat the prior intervening claim of another. 16-267

215. The right to make a second, will not be accorded where the first was for land subject thereto and failed through the fault of the entryman. 8-96; 11-290

216. Second, allowed where the first was made in good faith for land afterwards held not subject thereto, and accordingly canceled on relinquishment. 8-137

217. The right to make entry has not been exercised, within the meaning of the law, where the entry can not be perfected and the cause therefor is not due to fault on the part of the entryman; but the question whether a person has exercised the right by his first attempt, so as to inhibit him from making a second entry, will not be considered or determined until an application to make such entry is filed. 33-538

218. Second, may be made where the first was relinquished under belief it could not be maintained without danger to the entryman's life. 8-587; 22-380

219. New, allowed in place of illegal, good faith being manifest and no valid adverse claim. 4-492

220. Second, for the same tract accorded to one whose former entry, made prior to his majority, is canceled. 2-113

VII. Reinstatement.

See RAILROAD LAND, 140-153.

221. Will not be reinstated where the petition therefor alleges no error in the judgment of cancellation. 13-452; 15-64

222. Canceled on relinquishment filed under an erroneous ruling may be reinstated. 7-470

223. Canceled without notice may be reinstated for hearing. 4-397

224. Canceled on the erroneous report of the local office that no response had been made to notice of the adverse decision should be reinstated when the fact of such error is made known. 12-604

225. Canceled portion of, under changed conditions may be reinstated in the absence of adverse claims. 5-333

226. Of railroad lands improperly canceled may be reinstated on the forfeiture of the grant and confirmation of entries made of the granted lands. 6-444

227. Under the graduation act, erroneously canceled, may be reinstated for the benefit of the heirs though the entryman, in ignorance of his rights, made a homestead entry of the land which was afterwards canceled for failure to submit final proof. 10-569

228. Preemption entry canceled for failure to comply with the law in the matter of residence can not be reinstated on a showing of subsequent residence and cultivation. 12-418

229. Should be reinstated where canceled on the report of a special agent. An intervening entryman in such case should be given opportunity for defense. 15-354

230. Canceled for failure to submit proof within the statutory period, such failure being due to the arrest and conviction of the entryman on a criminal charge, can not be reinstated in the presence of an adverse claim. 15-550

231. Canceled for failure to submit final proof within the statutory period, can not be subsequently perfected in the presence of an intervening adverse right. 19-419

232. Reinstatement of, that has been canceled without due notice, is not defeated by an intervening adverse claim. 29-233

233. Should be reinstated where canceled through inadvertence, notwithstanding the intervention of an adverse claim. 16-353

234. Inadvertently canceled on the report of a special agent pending application for hearing should be reinstated. 23-54

235. Canceled by mistake, and without notice to the entryman of his right of appeal, and without his knowledge that such action was erroneous, may be reinstated on the application of the entryman's heirs made within a reasonable time after learning the facts. 10-569

236. On application for, the applicant should not be heard to say that he did not receive proper notice of the decision holding his entry for cancellation, where his failure to be heard on appeal is in no way due to the alleged insufficiency of such notice. 26-147

237. Where canceled on account of an adverse claim, when it should have been held intact subject to the perfection of

said adverse claim, it may be treated, on application for reinstatement, as though the latter action had been taken. 26-213

238. Canceled with the view to allowing the entryman to make a second, may be reinstated, where on account of poverty he is unable to make the second, and his good faith is manifest. 26-427

239. An entryman who fails to appeal from a decision of cancellation and permits said decision to become final, is not entitled to reinstatement, in the presence of an intervening adverse right, even though the original judgment of cancellation was erroneous. 20-363; 22-192

240. An entryman who fails to respond to a rule to show cause why his entry should not be canceled, or appeal from such order, is not, after the cancellation of his entry and the intervention of an adverse right, entitled to a reinstatement on the ground that he was not notified of the final order of cancellation. 27-548

241. Reinstatement of, for the benefit of heirs not defeated by the intervening entry of another, made with full knowledge that the heirs were in possession of, and residing upon, the land. 10-570

242. Reinstatement of, for the benefit of heirs not barred by the unsuccessful contest of one of the heirs against an intervening entry alleging priority of settlement. 10-570

243. Where a homesteader dies and his widow fails to submit final proof within the life of the entry, abandons the land, and another settles thereon, there are no rights left to descend to the children (on the subsequent death of the mother), that warrant reinstatement. 20-141

244. A transferee is entitled to a reinstatement where the entry is canceled through collusion with the entryman and where no opportunity to show the validity of the entry has been accorded the transferee. 14-85

245. Canceled for bad faith will not be reinstated on the application of a transferee except on a statement of facts showing the good faith of the entryman. 10-566

246. Should not be reinstated in the interest of a transferee who is negligent in prosecuting his claim, and where in con-

sequence of such negligence adverse rights have intervened. 19-186

247. Can not be reinstated for the benefit of transferees on the ground of its cancellation without notice to said parties, where it appears that they were not entitled to notice and the adverse right of another has intervened. 20-488

248. Change of entry (cash) by A was allowed in 1855, but not perfected; in 1876 an additional homestead entry by B was allowed and patented; B's grantor surrenders the patent on ground that the land is occupied by C; D, a claimant under A, with recently acquired rights, applies for reinstatement of A's entry, and it is allowed. 2-657

249. Where a desert-land entry is duly relinquished and canceled it will not be reinstated on the application of a stranger, though he claims to have purchased from the entryman a valuable interest in it. 2-24

250. The right of one claiming under purchase of a tract for which final certificate has been issued, but is thereafter canceled, can not be recognized as against a subsequent entry, made on the relinquishment of the prior claim, if it does not appear that the intervening entryman was a party to or had knowledge of the alleged fraud upon said incumbrancer. 22-163

251. Canceled on relinquishment prior to issuance of final certificate, and the land entered by another, can not be reinstated for the protection of a transferee who alleges that the relinquishment was in fraud of his rights, in the absence of evidence connecting the intervening entryman with such fraud. 16-140

252. Reinstatement will not be made where negligence on the part of the applicant in the assertion of his claim appears and an adverse right has intervened. 26-147

253. Right to reinstatement can not be recognized where the adverse action has become final and the claim of another intervenes. 16-404

254. May be reinstated where canceled on account of a prior valid adverse claim, and said claim is subsequently withdrawn. 12-208

255. Erroneously allowed of land withdrawn for a private grant, and thereafter canceled for conflict with said grant, can not be reinstated, though the land is not included in the limits of the grant as adjudicated. 18-553

256. Properly allowed of public land subject thereto and canceled on the erroneous supposition that the land was not subject to such disposition, should be reinstated, if the land is still within the jurisdiction of the Land Department and subject to its control. 28-330

257. The departmental instructions of April 28, 1899, relating to the reinstatement of cash entries canceled for supposed conflict with the Houmas private land grant, do not contemplate that such entries shall be reinstated by the Land Department of its own motion, and where those having rights under those entries do not assert them but allow the lands to be appropriated by others under the settlement laws, the presumption arises that they have acquiesced in the cancellation of the entries and abandoned any claim thereunder; and in such cases homestead entries for the lands, if the proofs be satisfactory, should be carried to patent regardless of such former canceled entries. 30-495

258. Vested rights secured under a valid, are not defeated by an erroneous order of cancellation; and if the land yet remains within the jurisdiction of the department, and the party claiming under said entry has not acquiesced in its erroneous cancellation, it is the duty of the Secretary to reinstate the same, and the intervention of adverse claims is no bar to such action. 28-209

259. An entry erroneously allowed of land reserved for a railroad grant, and subsequently canceled, may be reinstated with a view to equitable action for the protection of a *bona fide* transferee, it appearing that the right of the railroad company has been forfeited by statutory enactment. 20-200

260. Made under the credit system, and forfeited for the nonpayment of the full purchase price, is by the act of March 31, 1830, reinstated, and should go to patent without further payment, where the amount of \$3.50 per acre had been paid

prior to the passage of said act; and an adverse entry made subsequent thereto will not defeat the right to such patent. 27-341

261. Where one has been defrauded of an entry of public lands, the Land Department has jurisdiction, so long as the title remains in the United States and the sole parties concerned or claiming right to the land are the person defrauded and the person guilty of the fraud, or one taking benefit of the fraud with notice of it, to grant full and specific relief by reinstatement of the entry of the defrauded party. 36-474

VIII. Subject to Preference Right.

262. Will not be allowed for land that is subject to the preferred right of a successful contestant. 15-424;

16-334; 20-233

263. May be allowed during the period accorded the successful contestant, subject to his preferred right. (See 15-424.) 1-162, 486; 7-186; 9-70, 491

264. Made during the 30 days accorded a successful contestant is subject to such right. (See 15-424.) 9-478, 491

265. On cancellation of, under contest the land covered thereby is open at once to appropriation, subject only to the right of the successful contestant. (See 15-424.) 7-186

266. Made during the 30 days accorded a successful contestant should not be canceled without due notice to the intervening entryman and action had thereon. 6-643; 9-491; 10-18, 41; 12-285

267. After the expiration of the period accorded a successful contestant an entry by another is *prima facie* valid and should not be canceled without due notice to the entryman. 6-509; 7-49; 10-41

268. Of intervening claimant must be canceled if, after due notice, he fails to show sufficient cause why the adverse right of a successful contestant should not be recognized. 11-474

269. Pending an invalid contest a relinquishment and change of entry may be made. 2-220

270. Pending a contest a relinquishment and change of entry (timber culture to

homestead) may be made, subject to the preferred right of the contestant. 2-265

271. Preferred right of, if not exercised within a reasonable period, should be held as abandoned. 9-541

272. Allowed on a relinquishment during the pendency of a contest should not be canceled in the interest of the contestant on the successful termination of the suit without opportunity to the intervening entryman to show cause why the contestant is not entitled to enter the land. 13-34

IX. Land Reserved from.

273. An entry allowed in violation of the rule requiring notice of the filing of plat of survey will not give the entryman any advantage as against an adverse claimant who alleges priority of settlement. 19-91

274. An order suspending all action as to certain land defeats an entry made thereon pending such order. 3-238

275. During the pendency of a departmental order suspending, the local office is without authority to accept the relinquishment of said entry; and all action of the local office and General Land Office during the pendency of such order is without jurisdiction. 18-226

276. Suspension of, does not relieve the land from reservation; and during such suspension the entry of another can not be allowed. 11-556

277. May not be made on a tract withdrawn for the purpose of a sale under section 2455, R. S. 2-242; 12-397; 14-458

278. Not allowed for land suspended from sale or entry by order of the Surveyor General pending the final location of a private claim. 8-186

279. Right of, can not be exercised upon land embraced within a reservation created by Executive order. 13-607, 628

280. On land reserved by competent authority is illegal and can not go to patent, notwithstanding the fact that the records of the local office did not disclose existence of the reservation, that the entry was allowed by the local office and great expense incurred. 6-585

281. Of land reserved, confers no right as against the Government; but as be-

tween two claimants for such land, after it is restored to entry, priority of settlement may be considered. 19-1

282. Not allowed of land held and actually occupied by the military under direction of the War Department. 9-600

283. Erroneously allowed for land within an Indian reservation may remain intact on the release of the land and take effect as of date when the land is opened to settlement. 11-231

284. Made in good faith, in ignorance of the fact that the land was included within a hay reservation, may stand where the reservation is subsequently abandoned and the land is restored to the public domain. (See 14-233.) 10-313

285. Of land partly within an Indian reservation must be corrected, though made in consequence of an erroneous survey and valuable improvements have been placed on the land that must be excluded. 12-437

286. Disallowed on account of conflict with a prior withdrawal of the land for Indian uses may pass to patent, where it appears that the land is not required for the purposes of the withdrawal. 18-604

287. Of land included within an Executive order directing a survey for the purpose of establishing an Indian reservation may stand, where the subsequent order creating said reservation omits the land so entered. 20-414

288. In accordance with the lines of survey, as shown by the map on file, but found to embrace land within a military reservation, may be equitably confirmed on the release of such land from the reservation. 12-192

289. Erroneously allowed of land within a military reservation, but afterwards opened to entry, may remain intact and take effect as of the date when the reservation was vacated. 15-546

290. Allowed for lands subject to Indian occupancy is in violation of departmental regulations and must be canceled. 3-371; 4-341; 13-269, 302, 578; 15-19; 27-102

291. Will not be allowed for lands long occupied by Indians, with the consent of the Government and under direction of the military authorities. 3-203

292. Erroneously allowed while the land was suspended from entry may be allowed to stand on the restoration of the land, in the absence of an intervening claim. 20-12

293. Made on land covered by the prior timber-culture entry of another, not of record and under which no rights were asserted, is good as against everyone except the timber-culture entryman. 10-59

294. When priority of settlement is alleged under section 3, act of May 14, 1880, there may be a second entry, subject to an adjustment of the conflicting claims. 2-146

295. Allowed during the pendency of the prior application of another confers no rights as against the prior applicant; and in the event that such application is allowed the intervening entryman should be called upon to show cause why his entry should not be canceled. 12-47

296. Irregularly allowed during the pendency of a prior adverse application may be permitted to stand, where the right of such adverse applicant has been eliminated and the entryman has in good faith, and at large expense, improved the land. 17-235

297. A homestead entry made when the land embraced therein is covered by a "small holding" claim, duly filed with the surveyor general and on which proof is subsequently submitted, is invalid and must be canceled. 27-278

298. Of a successful contestant allowed during the existence of an intervening adverse entry of the same land confers no right. 18-446

299. Of land included within the entry of another is irregular, but *prima facie* valid on cancellation of the senior entry. 8-378

300. Land embraced within a *prima facie* valid, not subject to entry by another. 7-444

301. Where an entry or selection is erroneously allowed for land embraced in an entry of record, the lifetime of which has expired, such erroneously allowed entry or selection should not, for that reason, be canceled, but the entryman under the earlier entry should be called upon to show cause why his entry should not be

canceled, with a view to permitting the later entry or selection to stand. 40-594

302. Allowed while the land is covered by the entry of another may be suspended pending determination of conflict. 10-19

303. Two for the same tract should not be allowed of record at the same time.

6-425, 758; 10-18, 43; 13-686; 15-405

304. In the absence of an adverse right an entry based upon filing made while the land was included within a desert-land entry was allowed to stand. 3-526

305. Irregularly allowed during the pendency of another's appeal, involving the same land, may stand in the absence of any adverse claim or charge affecting the integrity thereof. 15-389

306. Should not be allowed during the pendency of final proof submitted by a prior claimant. 8-406, 414;

9-175, 215, 335; 14-165

307. Should not be allowed for land involved in a prior contest pending on appeal. 3-217; 8-121; 14-111

308. Should not be allowed during the pendency on appeal of the application of another to enter the same tract. 17-592

309. Though made on land not subject thereto, on the removal of the bar may stand intact. 2-244; 6-23, 425; 10-313

310. Subject to rights existing under a prior filing. 4-262

311. Irregularly allowed of land reserved therefrom may remain intact on the restoration of the land, and in the absence of any adverse interest. 19-1

312. Rejected application to file, pending on appeal, no bar to. 4-403

313. Not allowed on land improved by another and in his possession by color of law. 2-44

314. Will not be allowed to embrace a tract actually sold by the Government to another in accordance with the claim of such purchaser, but not described in the patent issued to him. 16-69

315. While relinquishing for the purpose of changing a homestead to a timber-culture entry, but while still retaining possession of the tract, the entry of another barred. 2-44

316. May be made by one relinquishing a claim pending contest against it illegally instituted. 2-220

317. Not allowed for swamp land. 10-39
318. Of lands withdrawn for the benefit of a railroad grant, confers no right as against the grant. 19-11
319. Allowed at a time when the land is embraced within a railroad withdrawal on general route is not void, but voidable. 22-213
320. Should not be allowed for land covered by railroad selection. 5-396
321. Should not be allowed for land covered by a pending railroad selection; but if allowed will not be canceled, but treated as an application and held subject to the selection. 7-80
322. Invalid railroad selection no bar to. 4-405
323. Pending appeal from the rejection of a railroad indemnity selection excludes land from. 10-15
324. Allowed for unselected land within the limits of an indemnity withdrawal, subsequently revoked, will not be disturbed. 7-240
325. No rights are acquired under an, made at a time when the land is included within a railroad indemnity withdrawal; nor can any right under such entry attach on the revocation of said withdrawal, if, prior thereto, the company applies to select the land. 28-226
326. Irregularly allowed, of land withdrawn for railroad purposes, may be permitted to stand as of the date such land is restored. 14-545; 19-575
327. Rejected on account of railroad indemnity withdrawal, subsequently revoked, may be allowed as of the date when the order of revocation became effective. 6-378
328. Permitted on showing compliance with law after the revocation of a former indemnity withdrawal covering the land. 6-382
329. Improperly allowed for land within a swamp selection may be permitted to stand, on the cancellation of the selection, if such action does not impair the right of an adverse claimant. 12-639
330. Good faith of, not impeached by the fact that an acre of the quarter section has been reserved for the location of a land office. 14-13

331. Land lying within the banks of a meandered stream, and forming a part of the bed thereof as surveyed, but subsequently left dry by a change in the channel thereof, can not be entered where patents have issued for the adjacent lands. 21-429

332. By final decree of cancellation of a patent, by a court of competent jurisdiction, the land embraced in the patent becomes part of the public domain, subject to settlement, if unappropriated, but does not become subject to entry until opened to entry by proper order of the General Land Office. 40-630

X. Cancellation.

See JUDGMENT, 5-15.

333. The Land Department has full authority to cancel entries for illegality and fraud. 2-599, 783; 3-299;

5-443; 6-503; 8-269; 9-316, 573

334. May be canceled by the department, prior to issuance of patent, on sufficient proof that the land is not subject to such appropriation or that the entry is in fraud of the law. 11-484, 507

335. *Ex parte* report of a special agent is not ground for cancellation; there must be a hearing. 2-784;

3-504; 4-340; 5-170, 313; 6-503

336. Of an entry on the report of a special agent is contrary to law, and an entry so canceled should be reinstated. The intervening entry of another in such case should not be canceled without opportunity for defense. 15-354

337. Not canceled except on conclusive evidence. 5-313

338. Of record should not be expunged by the local office. 4-554

339. May not be canceled by local officers except under the act of May 14, 1880. 3-567

340. Erroneously and inadvertently allowed, should not be canceled by the local office on its own motion, but where appeal is allowed from such action it will be treated as a decision recommending cancellation of the entry. 18-589

341. Properly made, when the land is subject to appropriation, must remain of

record until properly canceled or results in a patent. 13-686

342. May not be canceled by erasure on the record. 7-220; 16-409

343. Should not be canceled on the ground of fraud in the absence of clear and convincing proof. 16-130

344. The Land Department will take summary action when the record shows a fraudulent entry, notwithstanding contest allegation was abandonment and was not proved. 2-95, 97

345. Diligence in ascertaining the fact of cancellation must be exercised by settlers on abandoned homestead claims. 2-89

346. Erroneous cancellation does not subject the tract to appropriation by a stranger to the record who had located it while the entry (mineral) was subsisting. 2-767

347. Is a mere formal method of executing the judgment of the Land Department against the entryman, and, so far as his rights are concerned, takes effect by relation as of the date that judgment becomes final. 2 166

348. Procured through false and fraudulent testimony must be canceled. 13-612

349. Can not be allowed to stand where it is procured through fraud and misrepresentation as against the heirs of a deceased adverse claimant. 13-594

350. As to the rights of third parties cancellation takes effect (releases the land from reservation) by the formal act at local office. 2-168

351. When final judgment of cancellation is rendered by the commissioner the entry is thereby canceled and the land opened to appropriation without waiting for the expiration of the time allowed for appeal. (See 24-81.) 6-563, 700; 7-163; 10-221

352. Cancellation of, takes effect as of the date when the decision is rendered. 7-163; 12-59, 643; 18-558

353. A judgment of, takes effect as of the date rendered, and the land becomes subject to entry as of such date, without regard to the time when such judgment is noted of record in the local office. 19-547; 20-191; 22-77

354. A final judgment of cancellation is effective from its rendition; but no appli-

cation will be received nor any rights recognized as initiated by the tender of an application for the land until the cancellation of the entry has been noted on the records of the local office. 32-102, 395

355. Order of, is final as to the rights of the entryman in the absence of appeal, and no right under the canceled entry can be subsequently asserted as against the intervening claim of another. 16-8

356. Voidable, that conflicts with prior rights may be set aside. 5-379

357. Will be canceled where the law has not been complied with and further compliance is not possible, notwithstanding the plea of "hardship." 6-432

358. Set up to defeat the right of another must be canceled if the evidence shows noncompliance with the law. 6-330

359. An order of, is not effective in the absence of notice thereof to the entryman. 4-397;

7-42; 16-353; 18-311, 421; 20-311, 553; 21-169; 22-174; 23-113, 162

360. Of an entry without notice to the entryman is void for want of jurisdiction. 24-52; 26-499; 30-410

361. Of an entry without notice to a transferee, whose interest appears of record, while irregular, is not void for want of jurisdiction, if the entryman was duly notified of the adverse proceeding. 23-175

362. Though irregularly allowed should not be canceled without giving the entryman an opportunity to be heard in its defense. 12-47

14-111; 16-117; 17-189

363. Where a deserted wife has submitted final proof on her husband's homestead entry and by departmental decision is required to submit new proof, but does not do so, and the record does not show that she was notified of such requirement, the entry can not thereafter be properly canceled for failure to submit final proof within the statutory period, except after due notice to the wife. 25-402

364. The cancellation of a commuted homestead entry upon a contest initiated subsequently to the submission of final proof, after notice to the entryman, is conclusive as to him, but is not conclusive upon his grantee, if made without notice to such grantee and with no opportunity on the part of the grantee to be heard,

and the Land Department has jurisdiction, at any time prior to the issuance of patent, to hear and determine the rights of the grantee, notwithstanding the termination of the contest and the cancellation of the entry, and upon proper application by the grantee will order a hearing for such purpose. 32-249

365. An entry should not be canceled, on the allowance of an adverse claim, without due notice to the entryman, with opportunity to be heard. 17-20

366. An entry allowed by the local office should not be subsequently held for, without first affording the entryman an opportunity to show cause why such action should not be taken. 22-606

367. That has been duly canceled is no bar to the subsequent settlement or entry of another. 12-488

368. Cancellation of commuted entry carries with it the cancellation of the original entry, and record of such action should be accordingly noted. 4-237; 6-8, 107; 8-651; 12-243

369. By inadvertence and the intervention of an adverse claim, will not defeat the right to a full hearing in the premises. 16-353; 23-54

XI. By Employee of the General Land Office.

370. Origin and reason of the rule forbidding local officers and their employees from making entries of the public lands. 2-107, 314

371. Local officers and their clerks can not make, in their own districts, except under section 2287, R. S. 6-105

372. May be made by a local officer or clerk, but not by a special agent, in a district other than that in which he is stationed. 2-313

373. Made by a special agent of the General Land Office is invalid, under the provisions of section 452, R. S., and must be canceled. 18-425

374. May be made by employees of land office in a district other than that in which they are located. 6-106

375. The mineral entry of a deputy mineral surveyor within the district for which he is appointed is not in violation of any statute or regulation, but care

should be exercised in the allowance of such entries. 6-105

376. Clerks in local offices prohibited from making. 4-77

377. Of public land can not be made by an employee of surveyor general's office (General Land Office). 11-96, 348

378. Of public land can not be made by a deputy United States surveyor. 18-394

379. The disqualification to enter provided in section 452, R. S., extends to officers, clerks, and employees in any of the branches of the public service under the control of the commissioner. 10-97

380. A homestead entry based upon a soldier's declaratory filed after appointment as receiver is wholly illegal. 2-110

381. Whether or not a mineral "location" by a register is within the prohibition of circular of August 26, 1876, against "entry," a purchaser in good faith of the register's interest in such location may make entry. 2-754

382. A receiver who files soldier's declaratory prior to appointment may afterwards make preemption, but not homestead entry, provided he was a *bona fide* settler on the land prior to appointment; if he has made homestead entry, but did not reside on the land prior to his appointment, his entry must be canceled. 2-103

383. Where timber-culture entry was made when a receiver's clerk, but contest was brought after such service had ceased, in view of claimant's good faith, entry is allowed to stand. 2-314

384. Timber-culture entry made by a special agent will not be canceled for invalidity, where it was allowed under an express ruling of the commissioner, and the entryman subsequently complied with the law. 17-85

EQUITABLE ADJUDICATION.

See TIMBER AND STONE ACT, 137-138;
TIMBER CULTURE, 236-238.

I. Generally.

II. Desert-Land Entry.

III. Homestead Entry.

IV. Mineral Entry.

V. Preemption Entry.

VI. Private Entry.

VII. Final Proof.

I. Generally.

1. Board of, how organized. 4-156
2. Amended rules adopted October 17, 1910. 39-320
3. The board of, has exclusive jurisdiction within the sphere of the powers conferred upon it by statute. 1-411; 8-87
4. The board of, has no authority to waive a statutory requirement. 20-361
5. Decision that an entry should be submitted for, is an administrative act. 21-549
6. No appeal lies from the decision of board. 1-411
7. The power of the board to confirm may be exercised at any time after the defect if the case is in condition for the issue of patent in due course. 1-99
8. The authority of the board is confined to entries so far complete in themselves that when the defects on which they are submitted have been cured by its favorable action they pass at once to patent. 9-230; 25-2
9. An entry should not be submitted before it has been perfected by the payment of the purchase price and issuance of final certificate. 9-230
10. Patent should be surrendered on application for confirmation of entry which has passed to patent. 6-314; 8-183
11. Entries submitted for, should be placed under the rule appropriate thereto or submitted as "special;" and in submitting an entry for, under authority of a departmental decision, the authority may be noted, but the appropriate rule should be stated or the entry placed under the special provision. 10-299
12. The board may, on showing of fraud, revoke its confirmation. 1-411
13. Adverse claim bars action of the board. 1-78
14. A contestant's preference right is in the nature of an adverse claim. 1-78
15. Not defeated by an intervening contest filed after the initiation of action by the Government. 14-83
16. A protestant without interest does not have such an "adverse claim" to the land involved as will serve to defeat equitable adjudication, if it is otherwise subject to such disposition. 19-442, 467

17. Is not defeated by the right of a contestant who fails to show facts that warrant cancellation. 16-366; 18-96; 21-211
18. Entries to be confirmed where the fault is not with the purchaser. 4-156
19. Jurisdiction of the board does not extend to case of inexcusable failure to comply with the law. 4-347
20. Invalid entry should not be submitted to the board. 7-236
21. An entry made or commuted in violation of statutory provisions may not properly be submitted to or allowed by the board. 33-448
22. Additional rules of, 31, 32, and 33. 10-502
23. Entry on railroad land confirmed where company made default at hearing. 1-465
24. Not defeated by an adverse entry made after published notice of the pre-emptor's intention to submit final proof. 9-215
25. One who attempts to preempt land included within a supposed defective private entry is not the "rightful claimant" named in rule 13. 4-156
26. The plea of entry in good faith and ignorance of the law available before the board of equitable adjudication. 3-190
27. Does not extend to an entry for more than 160 acres unless the quantity entered is as near that amount as existing subdivisions will allow. 7-21
28. Rule 15 is obsolete. 14-407
29. Rule 33 cited and applied. 25-503; 26-549
30. Proceedings for patent to a mining claim embracing land lying partly within one land district and partly within another, conducted wholly within one district, and the allowance of entry thereon covering the entire claim, are in no wise effective as to the lands lying without such district, and do not constitute substantial compliance with law as to such lands, within the meaning of sections 2450 to 2457, R. S., such as would warrant confirmation of the entry in its entirety under said sections. 34-40

II. Desert-Land Entry.

31. Additional rules. 6-799
32. Rules 28, 29 and 30 amended. 39-320

33. Rule 29 provides for confirmation of desert entries where final proof and payment were not made within the statutory period. 9-231, 631

34. Rule 29 applicable where failure to make desert proof within the statutory period was the result of ignorance, accident, or mistake, and no adverse claim exists. 7-247

35. Rule 30 applicable where failure to reclaim and make proof under desert entry within the statutory period was the result of ignorance, accident, or mistake, or of obstacles which could not be overcome, and no adverse claim exists. 7-247

36. Rule 30 covering desert-land entries in which reclamation and proof were not made within the statutory period. 8-574

37. The intervention of an adverse claim precludes action under rule 30. 11-59

38. Rule 30, as applied to desert entries under which reclamation is not effected within the statutory period, not defeated by a contest begun while the entryman is engaged in good faith in curing his default. 21-211

III. Homestead Entry.

39. The board of equitable adjudication takes cognizance of entries made by a deserted wife or by minor child as an agent. 2-81

40. A widow allowed to enter land covered by her husband's entry that was canceled on relinquishment, subject to confirmation by the board. 3-191

41. Rule 24 covering cases where the homesteader has failed to establish residence within the period required. 8-568

42. Entry of Indian widow may be confirmed under rule 24, where final proof is not made within the statutory period. 16-137

43. Commuted homestead entry should be referred to the board of equitable adjudication if residence was not established within six months from date of original. 7-488; 8-566; 10-88

44. Equitable action, where residence is not established within the prescribed period of six months, is not necessary, if final proof is made within the statutory life of the entry, and such proof shows con-

tinuous residence for five years next preceding the date thereof. 26-687

45. A homestead entry may be referred to the board of equitable adjudication where the claimant, through circumstances beyond control, failed to establish residence within six months from date of the original entry. 7-351

46. A homestead entry should be submitted to the board of equitable adjudication when final proof is not made within the life of the original entry. 7-384

47. Where a homestead entryman deeded the land to another after the act of June 15, 1880, and the latter applied to purchase under the act of that date, the claim was sent to the board for confirmation. 3-190

48. Where a homestead entryman who has declared his intention of becoming a citizen dies, after submission of final proof, without having been admitted to citizenship, but having complied with the law in all other respects except as to the submission of proof within the statutory period, the entry may be equitably confirmed for the benefit of the heirs who are citizens and patent issue in their names. 31-403

IV. Mineral Entry.

49. Where the claimant has complied with all the requirements of law, save in the time of payment and entry, a reference of the claim to the board of equitable adjudication is unnecessary. 2-725

50. Board of, may confirm mineral entry under section 2457, R. S. 5-513

V. Preemption Entry.

See PREEMPTION, 241-247.

51. In suspended preemption entries, where the error arises from ignorance, accident, or mistake, and the land is held by a transferee. 8-489

52. Reference to board suggested in case of entry canceled in 1849 for supposed conflict with a private claim. 4-187

53. May be based on evidence furnished to secure an extension of time for payment. 17-141

VI. Private Entry.

See PRIVATE ENTRY, 21, 38-51.

54. Rule 11 covers private entries erroneously allowed for tracts not offered. 6-518

55. Rule 11 held to be in conflict with the decision of the supreme court in *Eldred v. Sexton*, 19 Wall., 189. (See 15-257.) 18-238

56. Rules 11 and 13, prescribed by the board, not annulled by section 2457, R. S. 8-95

57. Rule 13 considered in its application to private cash entries. 8-410

58. Cash entry voidable for want of restoration notice confirmed in the absence of fraud. 4-152, 285

59. Rule 13 covers entries on lands that had once been offered, afterwards temporarily withdrawn, and then released from reservation. 9-536; 21-253

VII. Final Proof.

See FINAL PROOF, IX.

60. Case involving irregularity in final proof may be submitted for. 1-484

61. Rule 10 applied where final proof, through no fault of claimant, was not submitted on the day advertised. 6-460

62. Rule 10 applied where final proof was not submitted on the day advertised, but no protestant appeared. 6-745

63. No such right is acquired by a contest against a homestead entry by one having no claim to the land, but who is seeking merely to secure a preference right, prior to the cancellation of the entry, as will prevent the acceptance of final proof on such entry, even though not submitted until after the expiration of the statutory period, and the submission of the case to the board for appropriate action. 33-21

EQUITY.

1. Equity can not create a right which the law denies, and therefore one without legal rights has no equities. 2-80

2. Is not created by a settlement upon land in controversy. 3-302

3. Not shown as against the pending prior application of another. 4-335, 353

4. Principles of, will protect one holding under an entry where by mistake the patent failed to describe the land purchased, as against another claiming under a subsequent location of the land made with a knowledge of the facts. 11-123, 389

5. A court of equity will not exercise its discretion and lend its aid in a case where it is clear no equity exists. 40-294

6. It is the duty of the Land Department to recognize equities such as are recognized by the courts. 35-161

ESTOPPEL.

See PRIVATE CLAIM, 92; RELINQUISHMENT, 27.

1. The United States can not be estopped by the frauds, not to say by the crimes, of the public officials. 2-797

2. The Government, by repeated official acts, is thereafter estopped from questioning the correctness of such action. 3-83

3. The rule of equitable estoppel upon the theory that loss should be borne by that one of two innocent persons whose conduct, acts, or omissions rendered the injury possible, can not be set up by the purchasers of land acquired under a void patent. 2-797

4. One who asserts no claim to land in the possession of another and remains silent, though knowing that the adverse occupant continues to claim and improve the land, is estopped from subsequently denying the good faith of the occupant and asserting a right of priority in himself. 14-475; 27-621

5. One who fails to assert any claim to land in the possession of another, and remains silent, though knowing that the adverse occupant continues to claim, occupy, and improve the land, is estopped from subsequently asserting a prior settlement right in himself, notwithstanding the tract is found upon survey to be a part of the technical quarter section upon which his improvements are located. 34-695

6. One who agrees to relinquish his claim and thus induces an expenditure of

money by an adverse claimant, and there-after refuses to carry out such agreement, is estopped from setting up his priority of claim as against said adverse claimant. 28-255

7. The right of a settler to make homestead entry will not be defeated by the prior application of an adverse claimant if, by the conduct of said claimant, he is estopped from asserting his claim as against such settler. 24-297

8. An entryman who discovers that his entry does not correspond with his application, but makes no effort toward correction, and permits another, without objection, to go upon and improve the tract omitted from his entry, will not thereafter be heard to assert any right under his original application as against such adverse claimant. 27-611

9. One who definitely declares the extent of his claim is estopped from subsequently claiming a larger tract to the injury of another who relies upon such declaration. 13-198

10. A contestant is estopped from asserting his preference right as against one with whom he has agreed to waive said right and thus induced said party to settle upon the land. 14-381

11. A contestant against two entries (homestead and timber culture) who files timber-culture application with the contest against the timber-culture entry is bound thereby as against one who subsequently settles on the homestead tract. 13-283

EVIDENCE.

- I. Generally.
- II. Deposition.
- III. Record.
- IV. Burden of Proof.
- V. Sufficiency.
- VI. Presumption.

I. Generally.

1. Instructions of August 19, 1911, respecting preparation of transcripts of testimony. 40-230

2. Rule 42 modified, in Oklahoma town-site cases, by circular of August 18, 1890. 12-186

3. Rule 42, as to manner of taking, in contest cases, amended. 28-301

4. Must be reduced to writing and signed by witness at the time when taken. 3-105

5. The testimony submitted at a hearing can not be considered as, if not signed by the witnesses or accompanied by the officer's jurat. 18-577

6. Testimony taken in shorthand must be written out and signed by the witness before it will be accepted. 3-121; 17-133

7. Failure of a witness to sign his testimony may be cured where a rehearing is ordered by his signing same after due examination thereof and making oath thereto. 11-575

8. Local officer, whose term of office has expired, may attach his signature to a jurat accompanying testimony that was taken before him while holding said office. 17-96

9. The fact that the witnesses are not sworn before examination does not vitiate the trial, where after examination they subscribe to their depositions and are sworn thereto. 27-519

10. Where the record recites the fact that the witnesses were duly sworn, and the testimony taken is signed by each of the witnesses, the absence of the officer's signature to the jurats is not ground for a new trial. 25-438

11. Rule 42 of practice, requiring that the transcript of the testimony of witnesses who testify at a hearing before the local officers shall be "then and there subscribed by the witnesses and attested by the officer before whom the same is taken, unless the parties shall by proper stipulation in writing, filed with the record, mutually agree to the contrary," has all the force and effect of law; and where, in the absence of the required stipulation, the transcript is not so subscribed and attested a certificate by the local officers that the several witnesses were sworn before testifying, together with a certificate by the stenographer who took the testimony that the transcript is a true and correct transcript of the testimony as given by the witnesses, are not sufficient to cure the defect, and such unsigned and unattested transcript can not be accepted as evidence in the case. 35-332

12. The examination of witnesses should be conducted as far as possible in accordance with established rules of evidence, and local officers may personally direct it in order to elicit all the facts. 2-234

13. The irregularity of order in which a party may be permitted to introduce his testimony will not be held reversible error where such procedure is not prejudicial to the rights of the adverse party, and is deemed necessary to the ascertainment of the relative rights of both parties. 25-380

14. As to character of land, submitted by the State under section 2488, R. S., must be taken before the surveyor general. 6-684

15. Neither local officer may, without specific instructions from the Land Department, take testimony or preside at the taking thereof elsewhere than in the local office. 2-205

16. Testimony prepared by plaintiff's attorney in his office may be submitted at the hearing, with right of cross-examination, if assented to by defendant. 2-225

17. Taken at the instance of an attorney who under section 190, R. S., was not authorized to act as such, will not be considered. 11-25

18. Action suspended in certain cases where the evidence had been taken before the attorney of record. 3-98

19. Local officers may, after due notice to parties, inspect the land involved in a contest. 6-626; 7-38

20. Knowledge of the local officers derived from a personal inspection of the premises may not be substituted for, but may be used by them to better understand and apply the testimony. 16-95; 24-277

21. Submitted on defective notice of contest may be accepted after new notice if the defendant does not respond thereto. 8-558

22. Illegally taken not considered. 4-380, 537

23. Where contest is allowed pending a prior invalid contest the contestant may not avail himself of the record in the prior contest; there must be a new notice and a new trial. 2-286

24. Taken in hearing held prematurely considered. 9-227

25. Secured on informal proceeding before special agent can not be made the basis of final decision, but can be considered in determining whether further investigation is justified. 28-263

26. All testimony to be taken under the direct supervision of the district officers when taken in towns where local offices are established. 3-128, 132, 160

27. In all cases where not taken in the presence of the local officers, that fact should be distinctly shown by the record, as the value of their finding of facts is largely dependent upon their opportunity to observe the appearance and demeanor of the witnesses. 18-253

28. Absence of local officers from hearing while witnesses are testifying does not affect, where there is no vacancy in the office of register or receiver, and the witnesses are sworn by one of said officers, and both of them examine the testimony, and render joint decision thereon. 27-425

29. Taken on protest must be forwarded to the General Land Office whether there is an appeal or not. 3-122

30. Submitted to the local office should be forwarded. 4-32

31. Prior to final action in a case before the local office the case may be reopened for the submission of additional testimony. 9-252; 15-93

32. Omission of the title of a case from a notice to take additional, is not a fatal defect where no prejudice is shown. 15-93

33. Additional, by the contestant may be admitted, in the discretion of the local office, after the claimant has submitted his. 12-14

34. Ten days' notice of the time and place of taking additional, sufficient to give the local office jurisdiction of the matter. 15-93

35. Testimony available by copy in different cases. 3-445

36. Taken in one case not to be considered in another. 4-274, 414

37. Taken in a different case and involving a different tract, not sufficient basis for final action. 22-622

38. Offered in another case should not affect the rights of one not a party therein. 7-497

39. The facts and issues in one case can not be considered in another and independent case. 9-497, 503

40. In ordering a rehearing the Commissioner of the General Land Office may properly direct the submission of the testimony taken at the former hearing. 20-369

41. Under rule 41 of practice the local officers are invested with discretionary power to determine whether additional testimony will cause unnecessary expense. 12-109

42. Vexatious and irrelevant cross-examination of witnesses should be prevented unless the party making it is willing to pay the cost of transcribing it. 2-196, 232, 234; 9-130

43. Local officers may summarily stop obviously irrelevant questioning; or, in their discretion, allow the examination to proceed at the sole cost of the party making the same. 18-559

44. The local officers have no authority to exclude, but may summarily put a stop to obviously irrelevant questioning. 1-106; 9-130; 11-461; 18-31; 21-54

45. Obviously irrelevant matter excluded from the record. 4-385

46. Testimony of witness who refuses to submit to proper cross-examination should not be considered. 3-452; 4-505; 5-599

47. It is not error that a party is not informed of his right to cross-examine witnesses where due opportunity for cross-examination is allowed. 11-418

48. Submitted without opportunity of cross-examining the witnesses should not be made the basis of final decision in a contested case. 14-471

49. Where the defendant does not exercise the right of cross-examination, but relies upon an appeal from an interlocutory order, he will not be heard to object to the *ex parte* character of the testimony submitted by the contestant. 17-393

50. In the trial of a contest the plaintiff is not entitled to have the claimant put on the witness stand that he may be cross-examined on his final proof. 21-458

51. The local office has no authority to compel the attendance of witnesses. (See act of Jan. 31, 1903, 32 Stat., 790.) 2-223

52. The fact that a party litigant pays the expenses of a witness, and for the loss of his time in attending the trial, does not necessarily indicate fraud or moral turpitude. 25-506

53. If a decision in accordance with the stipulation of the parties is rendered on testimony taken in another case, but not copied and filed with the case under consideration, a copy of said evidence must be transmitted with the appeal without expense to the appellant. 13-140

54. It is within the supervisory authority of the Secretary of the Interior to take cognizance at any time of the action of a court of record convicting a party of perjury committed in the testimony given by him in the case under consideration. 23-580

55. The conviction of a person on a charge of perjury committed in a case where another party is an applicant for land, and the issue is "soonerism," and such person testifies that neither he nor such applicant were in the territory within the prohibited period, is not necessarily conclusive as to such person's qualification, though affecting his credibility as a witness. 24-400

56. Additional evidence, under rule of practice 100, may be filed in *ex parte* cases at any stage of proceedings. 19-19

57. A report by the Director of the Geological Survey, based upon an examination by a field agent, concerning an application for reservoir site, may serve as a basis for a charge and order against the applicant to show cause why his application should not be rejected, but is not evidence upon which final action adverse to applicant may be taken without notice to him and opportunity to be heard. 40-484

II. Deposition.

58. Taken by deposition on due notice to the opposite party. 1-132

59. The local officers may direct testimony to be taken before an officer designated by them. 9-209

60. Taken by deposition must be in conformity with the rules of practice. 3-584

61. An application for an order to take depositions should be allowed if made in due compliance with the rules of practice.

17-321

62. On the issuance of a commission to take depositions both of the local officers should sign the same, but the absence of the signature of one of said officers from such commission will not defeat the consideration of the testimony taken thereunder, where no objection to its admission is made at the proper time.

25-438

63. Local office may properly refuse to issue a commission to take depositions if the applicant does not file the requisite affidavit as the basis for such action.

16-97

64. Order for taking, should be made of record.

5-212

65. Depositions can not be admitted if taken without due notice or without furnishing the opposite party a copy of the interrogatories.

3-584; 4-377; 7-433

66. In taking depositions 10 days allowed for filing cross-interrogatories.

1-106

67. In taking, the cross-interrogatories to be filed cover all right of cross-examination.

4-377

68. Testimony must be taken at the time and place named in the notice, and if taken without notice will not be considered.

3-195

69. After notice of a hearing it is too late to apply for an order to take, under rule 35 of practice.

16-360

70. When taken under rule 35, 30 days' notice not necessary.

4-540

71. To be taken near the land in controversy under rule 35.

4-440

72. Time may be extended for taking, under rule 35.

4-540

73. Under rule 35 a notary public may be designated to take testimony in contest cases.

17-4

74. Rule 35 does not require a commission to issue to the officer who may be designated to take evidence thereunder.

23-140

75. May be taken before a commissioner under rule 35; but this is only done on the application of one of the parties.

14-700

76. The affidavit of contest need not accompany an order designating an officer

to take testimony, nor is it necessary that such affidavit should be in his possession.

11-418

77. An officer designated to take testimony under rule 35 may authorize any other qualified officer to act in his place.

11-418

78. Want of authority in an officer designated to take final proof will not affect the validity of testimony taken before him under rule 35 at the time such proof is submitted.

11-539

79. Objection to, on the ground that it was not taken before the officer designated in the notice, properly overruled, where on the day set for hearing both parties were present, and the local officers named the officer before whom the evidence should be taken, and that the evidence was taken accordingly.

19-125

80. In case of an order for a rehearing under rule 35 it is not error for the local office to designate an officer before whom the testimony shall be taken different from the one named in the original notice.

20-18

81. The appointment of a commissioner to take testimony, under rule 35, is discretionary with the local officers, and their action under said rule will not be disturbed except upon full proof that they have abused their discretion.

25-466

82. Failure to appear and submit under rule 35 can not be excused on the mere allegation that the party in default was apprehensive that his testimony would not be fairly taken.

12-30

83. Where the defendant in proceedings under rule 35 submits no testimony but his own, and files a motion to dismiss the contest for want of evidence, he is not thereafter entitled to a further hearing to present additional evidence if his motion is denied by the local office.

16-88

84. Rule 35, as amended, contemplates the taking of testimony before United States commissioner, etc., in contested cases, as well as in hearings ordered by the commissioner. Local officers must exercise discretion in the former class of cases in allowing it to be taken elsewhere than at the local office.

2-231

85. In proceedings by the Government an application of the entryman to have the testimony taken under rule 35 should

not be denied, where it is evident that injustice and great hardship will result from such denial. 17-321

86. Under rule 35, as amended, the contestant is not required to file cross-interrogatories, as in cases of depositions under rules 23 to 28; the officer taking the testimony is to be governed by rules 36 to 42, and he may allow cross-examination in the absence of cross-interrogatories. 2-235

87. Having been taken before the officer designated under amended rule 35, the district officers can not thereafter receive supplementary testimony, but must consider the case on the evidence taken. 3-145

88. Where, in proceedings under rule 35, one of the parties is in default, and the commissioner declines to receive the testimony on behalf of said party, the local office may, on proper showing, at the final hearing, allow said party an opportunity to submit his testimony. 20-18

89. Application to take depositions on interrogatories should not be filed with an officer designated to take testimony, but, when so filed and sent up with the record, should be considered on the day of hearing. 11-575

90. May be secured through depositions taken on commission issued after hearing under rule 35. 10-480

91. Taken before a commissioner must be sealed up and transmitted by mail or express. 5-362

92. Personal delivery of, by officer taking the same under rule 35, instead of sealing and mailing the testimony as required by the rules of practice, does not preclude its consideration in the absence of a showing that rights have been prejudiced thereby. 17-4

93. An irregularity in the transmission of depositions may be waived by agreement of counsel. 11-183

94. Failure to indorse the title of the cause on the envelope inclosing depositions does not necessarily exclude them from consideration, in the absence of apparent prejudice to the interest of the parties. 11-183

95. Rule 28 requires an officer taking a, to read to the witness the questions and answers, but makes no provision that the

fact of such reading should appear either in the body of the deposition or the certificate of the officer. It would be better practice that such officer should certify that he read to the witness the deposition before it was signed or sworn to. 25-143

96. When taken before a notary, should be transmitted in the manner required by law. 6-788

97. After proceeding to trial and submitting testimony it is too late to apply for the taking of further testimony by deposition. 7-291

98. Objections as to the manner of taking testimony come too late when raised for the first time on appeal. 7-291

99. Objection to the manner in which taken comes too late when raised for the first time on motion for review. 7-497

100. An objection to the manner in which depositions are transmitted comes too late where raised for the first time on appeal to the department. 10-339

101. A technical objection to the regularity of depositions can not be raised on trial by one who participates in the examination of the witnesses and at such times raises no objections to the proceedings. 11-183

102. Irregularity in the submission of, can not be urged on appeal by one who, after such objection, proceeds with the trial and submits testimony on his own behalf. 10-169

103. Objection to a deposition on the ground that it was taken without due notice should be made at the hearing to be considered on appeal. 7-447

104. Though irregularly taken, will be considered when no objection was made at the proper time. 1-474

105. Officers selected to take, should not be open to the charge of bias or prejudice. 8-534; 10-436

106. Objection to the officer appointed to take testimony should be made before the testimony is submitted. 8-534

107. Testimony in a contest may be taken before an officer designated by the local office. 9-209

108. Testimony taken pending an order of continuance and before a notary not properly designated will not be considered. 6-440

109. Commissioner not authorized to take, of witnesses not specified in the application for his appointment. 9-135

110. Depositions retained by attorney before filing will not be considered. 5-362

111. Taken before an attorney of one of the parties will not be considered. 3-250

112. The fact that a commissioner is the father of the attorney for one of the parties does not disqualify him to take depositions in the case where he has no interest in the subject matter of the suit. 36-189

113. Evidence taken before a stenographer on agreement is not a "deposition" within the meaning of rule 56. 4-208

114. Rule 35 to be followed in proceedings arising on the submission of final proof. 7-315

115. Officers before whom testimony is taken under rule 35 are governed by the rules applicable to trial before the local office. 10-433

116. Taken under the laws of Minnesota, for the reason that the witness can not be produced at the trial, is not admissible where said witness is present at the hearing, though he may then refuse to testify. 19-64

117. May be taken by deposition, as provided in the rules of practice, in the case of hearings ordered on protest against a classification of lands under the act of February 26, 1895. 26-197

118. Depositions taken and transmitted to local office may be used on the trial by either party, whether taken in the interest of such party, or at the instance of his adversary. 29-581

119. The entire cost of depositions taken under the provisions of the act of January 31, 1903, must be paid by the party in whose behalf they are taken. 34-398

III. Record.

120. Circular of May 18, 1904, under act of April 19, 1904, relative to use of original papers on file in General Land Office as evidence in court proceedings. 32-635

121. Records of executive departments kept as evidence of transactions, not for purposes of notice. 1-20

122. The judicial records of a State, how established. 5-158

123. The decision of a State court is accepted in the department as in the courts of the United States. 5-158

124. Certificate as to record facts not accepted in place of transcript. 4-510

125. Judicial notice may be taken of facts disclosed by the records of the department. 22-229

126. Record facts can not be pleaded as "newly discovered," for the purposes of a new trial. 4-512

127. The facts of record are to be considered with other evidence. 3-193

128. A final determination as to the invalidity of a claim in proceedings involving such issue may be properly adopted in a subsequent case where another party sets up a claim to a part of the land involved. 15-415

129. Furnished in one case may be accepted in a subsequent *ex parte* matter. 8-233; 9-48

130. The records in the local office, when offered in evidence, should be accepted as competent evidence of the facts therein stated. 19-207

131. *Ex parte*, not accepted to defeat the records of the local office. 10-256

132. Parol testimony to contradict record date of patent not admissible. 10-343

133. Parol, may be accepted to show facts which should have appeared of record, and would have so appeared but for the omissions of the local office. 22-630

134. An affidavit made to supply alleged omissions of matter from the record, which should appear therein, if it exists in fact, will not be stricken from the files, on motion therefor, if the facts as alleged in said affidavit are not denied. 25-420

135. Matter of record not impeached by an unverified statement. 8-294

136. Unauthenticated copy of a *procès verbal* not admissible as. 5-577

137. A certificate by an officer that a certain instrument is recorded in his office, unaccompanied by a copy of said instrument, is not admissible as the basis for final action. 13-489

138. A certified copy of an indictment, verdict, and sentence are properly admissible as tending to establish a charge embraced in the issues tried and determined in the prior criminal proceeding. 22-530

139. A finding of fact in a judicial proceeding can not be accepted by the department as an adjudication where such fact does not appear to have been in issue or embraced in the judgment of the court.

22-592

IV. Burden of Proof.

See MINERAL LAND, 75-99; MINING CLAIM, 558; SWAMP LAND, 174-177; TIMBER AND STONE ACT, 125-127.

140. In proceedings against an entry the burden is upon the Government. 5-1, 22,

171, 371; 6-432; 7-374; 8-526

141. Rule as to burden not changed by the circular of July 31, 1885. 5-372

142. In a hearing on a special agent's report the burden is upon the Government.

9-340

143. Burden rests with the party attacking an entry. 1-129, 146, 477;

4-62, 80; 6-142, 398, 432, 660; 7-373

144. Burden rests upon one who attacks an approved Indian allotment, alleging a superior right to the land covered thereby. 24-323

145. Contestee to proceed only after the establishment of a *prima facie* case.

5-59

146. Burden is upon one attacking the official return of surveys. 8-440, 467, 555

147. Burden on the party attacking returns of surveyor general. 5-280

148. Burden is upon one alleging priority of right as against a subsisting entry. 8-623

149. In a hearing to determine priority of right as between adverse applicants, where no entry has been allowed, the burden of proof can not be said to rest upon either of the applicants. 28-169

150. Burden is with an applicant for reinstatement. 1-77

151. On *prima facie* case made the burden shifts to the defense. 5-363

152. In case of special defense the burden shifts to the defendant. 4-542

153. In proceedings involving forfeiture the same strictness of proof is required as under a penal statute. 1-146, 153

154. The burden is upon the contestant to establish his charge by a preponderance of. 9-299, 538

155. A clear preponderance of, justifies judgment of cancellation. 6-483

156. Preponderance of, required to justify forfeiture. 6-140, 483

157. In a contest the matter in dispute must be decided upon a preponderance of the evidence, whether parol or record, or both parol and record. 9-213

158. When an intervening entryman is called upon to show cause why his entry should not be canceled, and the right of a prior adverse claimant under a homestead declaratory statement recognized, the burden is upon said entryman. 22-113

159. If improperly placed, and accepted without objection, the party so relieved from said burden is not in a position to complain of such action on appeal, in the absence of an attempt in the appellate tribunal to shift the burden, and apply the changed standard to the record made on the hearing in the local office. 24-507

160. Parties protestant, that allege an interest, and at the hearing assume the burden without objection, will not be heard to say, for the first time when the case comes before the department for disposition, that the burden was wrongly placed.

26-122

161. Where the Commissioner of the General Land Office expressly places the burden upon one of the parties, that direction is binding upon the local office. 27-1

162. Where an entryman is shown, in a contest proceeding against his entry, to have been in default as to residence prior and up to the filing of the contest affidavit based upon such default, and to have thereafter resumed residence prior to service of notice of such contest, the burden is upon the contestee to show that such resumption of residence by him was not induced by such contest and was in good faith. 35-561; 40-274

V. Sufficiency.

163. Should be confined to the charge as laid in the information. 1-113, 470; 4-299, 424; 6-368; 11-75; 13-90

164. Must follow the charge as laid.

5-177, 299, 329

165. Testimony with respect to a charge not specified in the notice of contest is

inadmissible, and on objection thereto should not be considered. 27-247

166. Relevancy of, can only be questioned by the defendant. 5-639

167. Admissibility of, dependent upon the charge under investigation. 5-299

168. An objection to testimony on the ground of variance between the charge in the affidavit of contest and that set forth in the notice of the hearing, comes too late when raised for the first time on appeal. 25-52

169. Established rules of, followed where fraud is charged. 4-64

170. Where fraud is alleged against an entryman proof of other acts of a similar nature, done about the same time, is admissible to show intent. 19-258

171. Of offer to sell the land admissible under a charge of fraudulent entry. 4-369; 5-313

172. Best of which the case is susceptible must be produced. 4-510

173. Of secondary character not received without proper foundation laid therefor. 1-440

174. Hearsay, when admissible in proof of death. 6-241

175. On a charge that a deceased entryman in his lifetime had agreed to convey to others the land in dispute, hearsay testimony as to such agreement is incompetent. 17-321

176. Mere opinion not received as, where facts can be had. 4-292; 7-441

177. *Ex parte* testimony not considered. 3-250; 4-89, 168, 201, 229; 5-590; 12-67; 15-263

178. Affidavit filed with an appeal to the department not received as, in a contested case. 11-553

179. Papers containing *ex parte* statements relative to contests should not be filed therein if not served on the opposite party. 18-167

180. *Ex parte* affidavits should not be filed with an appeal, and if so filed will be returned to the party filing the same. 22-245

181. Affidavits filed after case is closed in the local office not considered except on motion for rehearing. 5-425; 13-562

182. Filed after the close of the hearing and appeal from the decision thereon, may

be considered in the interest of the Government. 23-34

183. Final proof not treated as, on hearing. 4-275; 6-285

184. Testimony offered on final proof not admissible in proceedings ordered to test the validity of an entry, but due weight should be given to the legal presumption that the entry is valid. 11-176

185. Final proof testimony not accepted in a contest proceeding for the purpose of establishing the facts therein recited or to overcome the testimony presented at the hearing; nor can testimony presented at the hearing be impeached by an *ex parte* showing. 36-228

186. Final proof can not be considered as, in a case arising under a protest against the acceptance of such proof. 13-663

187. In a contest wherein the truth of final proof is in issue, it is proper and necessary to examine said proof, and compare the statements therein made with the facts established at the hearing. 22-619

188. On hearing, the report of a special agent is not. 4-65, 340; 5-1, 22, 170; 6-285

189. Statement of special agent made privately to local officers should not be accepted as. 4-228

190. The result of proceedings, in which the parties thereto have had full opportunity to present evidence in support of their claims according to the recognized rules of procedure, should not be disturbed or affected by the report of a special agent on the entry involved. 26-139

191. Unsworn statement of special agent should not be admitted as. 6-265

192. The report of a register based on an inspection of the land, made without notice to the parties and after the case is closed, is not admissible. 6-626; 8-38

193. Where the character of the land is in issue, and the evidence submitted is unsatisfactory, and the Secretary, on his own motion, with notice to the parties, directs a mineral expert to examine the land, and testify as to the result, with opportunity given for cross-examination, and no objection is made to such direction of the Secretary until after its full execution, the testimony of such expert, so given, may be properly considered. 25-167

194. The fact of compliance with law after affidavit of contest is filed, but before legal notice thereof, goes to the weight, not to the admissibility, of the testimony. 9-299

195. Admissible as to acts performed before service of notice. 5-299, 315; 6-300

196. As to acts performed after the initiation of contest will not be considered as affecting the case made by the contestant. 4-542; 5-351

197. In hearing ordered on special agent's report the entryman may show acts in compliance with law performed after notice of the hearing. 7-486

198. As to subsequent compliance not material on a hearing ordered to determine priorities and where the party to be affected thereby is not offering final proof. 6-368

199. As to acts performed by the entryman after the submission of final proof is only considered for the purpose of discovering the claimant's intentions prior to said date, and must be clear and convincing to prevent the consummation of title. 12-647; 13-211

200. As to motive of contestant in attacking an entry not material. 5-296

201. Allegations in affidavit for continuance as to the testimony of an absent witness should be considered as, on admission that the witness would so testify if present. 4-377, 394; 6-27

202. Sufficiency of, on which judgment was rendered can not be questioned collaterally. 7-400; 19-488

203. Where claimant's affidavit, asking a hearing on the ground of abandonment, admits noncompliance with law, the claim will be canceled without hearing. 2-445

204. Ignorance of the effect of acts may be considered in determining questions of good faith. 6-169

205. Admission that the facts stated in a special agent's report are true does not extend to a conclusion of said agent contained therein. 11-462

206. The admissions of an entryman against the validity of an entry are admissible in a proceeding where such entryman fails to appear and testify. 14-392

207. An agreed statement of facts precludes the introduction of evidence to contradict it. 2-571

208. Stipulation of parties that investigation shall be limited to the six months preceding initiation of contest does not deprive the Government of the full value of the information elicited at the hearing. 2-96

209. May be considered though the contestant withdraws. 5-40, 385; 7-394

210. Government may take advantage of evidence brought out in a contest whatever may be the rights of the parties as against each other. 6-27; 7-395; 9-391

211. For the impeachment of a witness admissible. 1-105

212. Of interested party to be taken most strongly against him. 5-56

213. A will executed *in articulo mortis*, though unauthorized by law, will not be presumed fraudulent. 6-30

214. In an action against the heirs of a deceased entryman admissions of the decedent against his interest may not be proven by the testimony alone of the opposite party. 20-213

215. As to statements made by deceased affecting the validity of his entry not admitted. 6-30

216. The statements of a party to his attorney are not admissible in evidence as against the interest of said party. 7-136

217. Confidential communications of the client to his attorney are not competent, in support of a charge subsequently made by the attorney against the entry of his former client. 18-31

218. Stipulation of attorneys as to matters of, is binding upon the parties in the absence of misconduct on the part of the prevailing party. 11-71; 16-197

219. Parol testimony identifying an entryman as the one named in the records of the local office is properly admissible. 19-207

220. An objection to the admissibility of, comes too late when raised for the first time on appeal. 22-530

VI. Presumption.

221. Presumptive as to continuance of life. 4-326

222. There is no presumption of death until seven years after the homestead entryman's disappearance. 2-120

223. Of bad faith is raised by an attempted sale of a homestead. 2-144

224. Of fraudulent inception of an entry (timber culture) arises from its early relinquishment for value. 2-92
225. Of forgery may not arise from a mere comparison of signatures, without allegation or other proof. 2-240
226. Allegation under oath, corroborated, that claimant was informed by local officers that he could not make a certain entry, if uncontroverted, presumed to be true. 2-37, 246, 247
227. Refusal of the entryman to testify justifies an adverse conclusion where his good faith is in doubt. 9-175; 11-579
228. The payment of fees, which is prerequisite to a right, will be presumed where the contrary does not appear. 2-323
229. Where the preemptor is required to make payment by a certain date and the record does not show the payment, it is presumed that he failed to make it. 2-526
230. In the absence of allegation or showing to the contrary it is presumed that the officers (intrusted with the control of a survey) have properly discharged their duty. 2-465
231. Where mineral entry had lain dormant for seven years, uncanceled, all the antecedent basic proof was presumably regular and sufficient. 2-769
232. Jurisdiction will be presumed where the records of the court do not affirmatively show a want of it. 2-364
233. Where there is no adverse claim or evidence of fraud and the evidence as to proper discovery of mineral is conflicting, such discovery will be presumed in support of an entry already made. 2-742
234. Statements not controverted made as the basis of a motion of which due notice has been given, taken as true. 6-240
235. As to the fraudulent acts of a third party will not establish a charge of fraud against an entryman, if his connection therewith is not shown. 18-467
2. Circular of May 14, 1895, with respect to unearned. 23-572
3. Circular of December 26, 1896, with respect to unearned. 23-573
4. Unearned and unofficial moneys; circular of June 5, 1897. 24-505
5. Circular of May 16, 1907, under act of March 2, 1907, relative to unearned fees and unofficial moneys. 35-568
6. Circular of April 22, 1898, in relation to fees for reducing testimony to writing, etc. 26-657
7. Circular of April 7, 1904, relative to fees for taking testimony, making transcripts, copies of plats, etc. 32-554
8. Circular of August 28, 1906, relative to fees for furnishing township plats or diagrams under act of March 3, 1883. 35-139
9. Circulars of May 20, 1905, relative to fees and commissions of registers and receivers. 33-627, 631
10. Instructions of June 5, 1908, under section 14, act of May 29, 1908, relative to fees for reducing testimony to writing. 36-481
11. Fees for reducing testimony in contest proceeding. 37-662
12. Instructions of May 28, 1910, with respect to charges for carbon copies of testimony in contest cases. 38-615
13. Fees for executing affidavits and depositions. 37-236
14. Instructions of October 8, 1907, relative to fees for lists of lands for taxation purposes. 36-116, 194
15. Circular of March 24, 1905, concerning fees of United States Commissioners, United States court commissioners, and judges and clerks of courts of record, for oaths, affidavits, final proofs, etc. 33-480
16. Are intended by law to pay the expenses of the local officers, and are not part of the price of land or proceeds arising from the "sales of public land." 2-695
17. The bill of, to be kept posted in a conspicuous place in the local office. 1-518
18. Of the local officers that would increase their salaries must be turned into the Treasury. 5-569, 577
19. Belonging to the register should be paid to the receiver. 1-524

FEES.

See ACCOUNTS; PAYMENT; PRACTICE, VI; REPAYMENT.

1. Circular instructions. 1-517, 518, 519, 523, 524; 2-660, 662, 665; 3-58, 605; 5-569, 577; 9-655

20. None allowed for correspondence. 1-519
21. No fee is chargeable for the delivery of patent. 13-498
22. The local officers are not entitled to collect, from one who purchases at a public sale land sold as an isolated tract. 21-454
23. Local officers may not demand a fee for answering a verbal or written inquiry concerning the status of a tract. 2-198
24. No charge for information concerning a tract of land is to be made unless in the form of plats and diagrams. 2-660
25. To surveyors general for certified copies, etc. 5-190; 35-514; 36-125, 282
26. Circular of November 22, 1909, relating to fees of local officers for certified copies of records. 38-312
27. Instructions of February 2, 1912, relative to fees for homestead entries in excess of 80 acres. 40-399
28. Local officers may charge less, but not more, than the fees fixed by circular of July 20, 1883, for preparing plats and diagrams. 2-661
29. For registered mail matter specified. 3-140
30. Disbursing agents to pay fees on registered mail from the advances for contingent expenses. 3-108
31. May not be charged in offices not consolidated for abstracts from the records, except for plats and diagrams and lists of taxable lands. 2-655, 671
32. For examining testimony, furnishing transcripts, etc. 1-517
33. Or commissions not allowed for additional entries made under the act of March 3, 1879. 1-525
34. Fees allowed for reducing testimony to writing, for plats and diagrams, for transcripts of records, for examining and approving testimony in final homestead cases; receiving and accounting for fees. 2-664; 5-579
35. No fees are to be charged for reducing or examining testimony, for the writing contained in the original entry papers, or for certificates and receipts in final proofs. 2-662
36. Registers and receivers are each entitled to 1 per cent of the amount received for canceled military bounty land warrants. 3-145
37. Rule for computing the fees due for railroad selections. 2-662
38. On filing selections under the act of January 12, 1891, the railroad company must pay the statutory. 24-543
39. The fees provided in section 2238, clause 7, R. S., are to be paid on all the lands located by the railroad company (Burlington & Missouri River), which may fairly be construed to be all the lands ascertained to belong to the company under the grant. 2-669
40. The register and receiver are each entitled under the act of July 1, 1864, to a fee of \$1 for each final location of 160 acres made by a railroad company. 38-262
41. Of \$1 each to the register and receiver is chargeable to the State for each school indemnity selection of 160 acres. 13-728
42. A fee of \$1 is not payable by the State in original swamp selections, but is payable in indemnity swamp locations. 2-667
43. For State selections must be paid before approval and posting. 1-537
44. Local officers are not entitled to, collected on approved State selections that become final prior to their incumbency. 29-318
45. In making selections under the act of June 21, 1898, the, required by law to be paid to the register and receiver should be paid by the Territory, and not from the appropriation made in section 11, of said act. 27-284, 303
46. On the location of desert lands by a State under the fourth section of act of August 18, 1894, the register and receiver are each entitled to a fee from the State of \$1 for each final location of 160 acres. 24-66
47. The payment of the, specified in section 2238, R. S., should be required in all cases of school indemnity selections made by the Territory of Oklahoma before submitting the lists to the department for approval. 26-536; 29-72
48. Where a list of school indemnity selections has been approved without payment of the statutory, the amount due remains a charge against the Territory, but can not be enforced by vacating the approval. 29-72

49. Where rearrangement of lists of school-land selections is made necessary by reason of change in departmental rulings, such rearranged lists should, for the purpose of determining the fees due thereon, be considered as amendatory and not as original selections. 36-136

50. The second clause of section 2238, R. S., providing a fee to the register and receiver of 1 per cent on moneys received is applicable only to moneys received at cash sales of lands, and does not include money paid on account of timber depredations. 25-370

51. The eighth clause of section 2238, R. S., fixing a fee of \$5 to the register and receiver for superintending public land sales, does not authorize the collection of such fee on the sale of an isolated tract. 25-370

52. On allowance of second homestead entry the claimant is not entitled to credit for fee and commissions paid on first, but should apply for the repayment thereof. (See 21-211.) 2-660; 10-469

53. An applicant is not entitled to have the fees and commissions paid on a prior homestead entry, canceled for conflict, applied in payment of the fees and commissions in connection with a second application; but such fees and commissions may be repaid under section 2, act of June 16, 1880. 34-251

54. An applicant to make homestead entry is not entitled to have the fees and commissions paid by him in connection with a prior rejected application applied in payment of the fees and commissions required in connection with his second application, but must tender therewith the requisite amount to cover fees and commissions. 34-251; 38-204

55. As to credit for fee and commissions in case of canceled entry where application is made to reenter the same tract. 3-498, 605

56. Of \$10 required in case of additional homestead entry under section 5, act of March 2, 1889, if the amount of land embraced therein exceeds 80 acres. 13-614

57. No fees may be charged for testimony not reduced to writing by the local officers personally, or by their clerks, or (in final homestead cases) by a judge or

clerk; the various statutes regarding such fees cited. 2-665

58. Local officers are allowed the same, for examining proofs made before judges or clerks of courts, whether approved or not, as are allowed by law for taking the same. 3-58

59. Local officers are entitled to, for testimony reduced to writing in final homestead or preemption proofs whether the entries are allowed or not. 3-58

60. Not to be charged for the examination and approval of testimony given before judge or clerk of court except in final homestead cases. 5-580

61. Local officers not authorized to collect, for reducing to writing the testimony in preemption final proof unless such service is actually performed by them. 9-60

62. Where final proof is taken before some other officer than register or receiver, under amended rule 53, such officers are entitled to no, until action on the final proof. 25-285

63. Local officers not entitled to, for examining and approving testimony in preemption cases taken before judge or clerk of court. 2-659; 3-160

64. The district officers are entitled to, for testimony actually reduced to writing by them or their clerks, but not for that merely examined by them. 3-125

65. Can not be collected by local officers in contest cases for reducing testimony to writing if such service is not performed by them or by one acting under their employment. 12-531

66. Duplicates of homestead and preemption proofs are not required by law, and any charge exacted for them is illegal. 2-671

67. Indian homesteads under act of July 4, 1884, allowed without payment of. 3-91

68. The disposition of Omaha filing fees is not affected by the act of May 15, 1888. 12-371

69. Paid on Omaha Indian filings under the act of August 7, 1882, must be reported as a part of the maximum amount allowed the local officers on account of salary. 12-371

70. Allowable to local officers on Indian allotments, under section 4, act of Febru-

ary 8, 1887, are in the form of a commission, and determined in amount by the price and area of the land, and it therefore follows that such fees can not be fixed and allowed until after survey of the allotted tracts; but it is not essential to the allowance of such fees that the allotments should have been finally approved. 22-35

71. The practice respecting commissions to be paid the register and receiver in the administration of the acts of March 2, 1889, and August 15, 1894, relating to the disposition of lands in the late Sioux Indian Reservation, in case of the commutation of an entry, adhered to. 31-250

72. For writing done in making proof on mineral application. 1-517, 518

73. Allowed for acting on mineral application. 1-517

74. Upon the acceptance of an adverse mining claim by the local officers they become chargeable with the fees required by law to be paid. 29-413

75. None chargeable on the rejection of adverse mining claim. 13-720

76. For notice of cancellation to be paid to the receiver. 5-569, 579

77. Registers may not retain the fee of \$1 authorized to be collected for notice of cancellation of an entry unless such notice has been actually given. 2-660

78. No time specified in the statute or regulations when the successful contestant shall pay the \$1 fee for notice of cancellation. 16-516

79. The fee allowed the register for giving the successful contestant notice of cancellation is a matter personal to said officer, and he alone has standing to complain of its nonpayment. 18-75

80. Of \$1 for notice of cancellation will not be deemed unearned, where the entry is canceled on relinquishment and the contestant enters the tract so released. 19-517

81. Where lands have been transferred to a new district pending contests against them the officers of said district are entitled to the fees for notices of cancellation. 2-222

82. Instructions of March 11, 1911, under act of March 4, 1911, authorizing refund to registers of cancellation-notice fees. 39-556

83. There is no preliminary fee of \$1 to be paid at initiation of contest; the fees allowed are provided for in rules 54 to 65. 2-661

84. Tender of all, required by the local office at the time of application to enter sufficient to save the rights of the applicant. 16-514

85. An actual tender of, not required of an applicant who applies to enter in the presence of a prior adverse entry. 18-75

86. Fees and commissions deposited with application to enter, prior to cancellation of existing entry, give no right to the land. 2-49

87. The Land Department does not summon witnesses nor exercise any control over the question of fees to them. 2-223

88. District officers can not employ clerks at the expense of the Government for the purpose of reducing testimony to writing. 3-105

89. Local officers not entitled to, when testimony in contest is taken elsewhere. 1-519

90. A per diem fee for hearing cases or taking testimony must not be charged by local officers. 3-105

91. In proceedings by the Government against an entry a witness who is summoned by the claimant and testifies in his behalf is not entitled to any fees from the United States. 10-385

92. For reducing testimony to writing and clerical services in contest. 5-245, 569, 579

93. The whole charge for taking down and writing out testimony is limited to one charge of 15 cents for each 100 words. 3-108

94. There is no authority for allowing the local officers a 1 per cent commission in excess of the maximum compensation for their services in conducting the sale of town lots under the act of September 1, 1888. 15-432

95. An unearned cancellation should not be delivered to anyone except the depositor in the absence of due authority to receive the same and receipt therefor. 29-245

96. Registers and receivers are not entitled to fees and commissions in connection with the filing of applications for the right to use water from irrigation works

constructed under the reclamation act, but are entitled to commissions of 1 per cent on all moneys received from water users at the office for which they are appointed to the extent of the maximum salary fixed by statute. 35-357

FENCING.

See PUBLIC LAND, III.

FILING.

See APPLICATION; COAL LAND, III; PRE-EMPTION, VII.

- I. Generally.
- II. Amendment.
- III. Second.
- IV. Osage.

I. Generally.

1. Can not be made until the land has been surveyed and the plat filed in the local office. 5-275; 10-195

2. Name of applicant should be noted on the declaration. 5-199

3. The inadvertent omission of the applicant's signature from a declaratory statement may be supplied by allowing him to sign the same *in pro tunc*. 17-396

4. Office of, under the preemption law, is to give notice that the settler intends to purchase the land described therein, and such notice during the statutory period protects the claim as against subsequent settlers. 1-406; 5-249, 473, 632; 9-41

5. A preemption filing, which is a declaration of one's intention to claim a tract of land, confers a mere preferred right against third persons, but none against the United States; land covered by it is public land and is open to settlement or entry, subject only to the preferred right of preemption. 2-581

6. Of a preemptor determines the amount of land covered by his claim, and a mere allegation that other land was embraced therein will not be accepted as against the record. 4-401; 6-249; 12-471

7. And settlement confer no vested right in the land under the preemption law. 16-526

8. Does not constitute an appropriation of the land. 1-30, 431, 435; 4-404; 7-280; 8-224; 9-264

9. There is no difference in principle between the case of a filing made of record and of one offered but erroneously rejected. 2-37

10. Rejected on appeal no appropriation of the land. 4-403

11. *Prima facie* valid, raises a presumption as to the fact of the claim and its validity. 1-379; 4-402; 10-645

12. Submission of final proof and payment for a portion of the land embraced within a preemption is an abandonment of the remainder and relieves such tract from the operation of the filing. 1-485; 7-206, 261; 16-251; 26-379

13. Circular regulations with respect to "expired" filings under the preemption law. 3-576

14. An "expired preemption filing" is no bar to the disposition of public land. 3-317

15. That has expired without proof and payment gives rise to the presumption that the claim has been abandoned. 10-645; 11-138; 12-384

16. Rights under a preemption are forfeited by long-continued failure to assert the same in the manner provided by law. 26-252

17. On the expiration of, without proof and payment the presumption arises that all rights thereunder are abandoned, but such presumption is not conclusive. 13-22, 617

18. For unoffered land under the act of 1843 protected the settler until the commencement of public sale, and this protection was not modified until the passage of the acts of July 14, 1870, and March 3, 1871. 1-379; 5-530, 553; 7-13; 11-195

19. Life of, extended one year in certain States by act of May 9, 1872. 17-537

20. Statutory limitation as to life of, on unoffered land. 14-656

21. By the express terms of section 14, act of September 4, 1841, failure to make final proof and payment under a preemption, for unoffered land prior to the day fixed for the sale thereof operates to extinguish all rights under said. 26-680

22. Life of, extends till six months after close of military service where ac-

tually called away from the land by such duty. 14-364

23. Time of, after settlement not material in the absence of adverse claim. 13-576

24. Failure to file declaratory statement will not defeat right of purchase in the absence of adverse claim. 5-632

25. Failure to file a declaratory statement will not defeat settlement rights as against the Government. 7-131

26. Is not a condition precedent to the right of preemption, but a protection against subsequent settlers. 4-514; 8-433

27. Failure to make, within statutory period defeats the right of purchase in the presence of an intervening adverse claim. 2-578; 3-455; 6-391; 10-485; 12-519; 13-209

28. Right of preemption by one who has failed to file in time not defeated by the intervening homestead entry of another who has not complied with the law. 5-188

29. As between two settlers who are both in default as to, the one who first gives notice of his claim is entitled to priority. 15-381

30. Failure to file in time does not defeat the claim in the absence of another settler who has complied with the law. 1-357, 380, 497; 5-188

31. The words "next settler" in section 2265, R. S., are not necessarily confined to a preemptor. 1-380

32. Purchaser at private entry held not a "settler" that can take advantage of default in. 8-346

33. Default in, for unoffered land forfeits the claim only in favor of the "next settler" who has complied with the law. 8-346

34. Default in, for offered land does not defeat the right of purchase if cured prior to the intervention of an adverse right. 10-387

35. The preferred right of purchase secured by a preemption, on "offered" land, terminates with the expiration of the statutory period for the submission of final proof and making payment, and, if within that period such filing is not carried to entry, it is not after such time even an apparent record claim to the land. 28-75

36. Failure to make, does not warrant the presumption that the settlement was not lawful. 5-653

37. Though made after the legal period, is valid, if before the intervention of an adverse claim. 1-142

38. Where the claimants are equally in laches as to filing, the land is awarded to the prior record and settlement. 1-438; 3-347

39. And settlement confer an inchoate right under the preemption law. 9-41

40. To be valid, must be founded upon a prior actual settlement. 1-432, 439; 2-621; 5-188, 289

41. Without settlement voidable. 6-792

42. Filing before settlement cured by settlement prior to the inception of an adverse right. 3-374, 499; 4-424, 451; 11-208; 13-480; 17-200, 501

43. One who has failed to file in time can not postdate his settlement in order to defeat the intervening claim of another. 12-519

44. A preemptor is not estopped from proving that his settlement was in fact made at a different and earlier date than that alleged in his declaratory statement. 1-444; 3-102, 380; 11-143; 12-299; 14-431

45. Held to precede settlement where the declaratory statement is made out and mailed prior to performing any act of settlement. 8-331

46. A filing based upon settlement made in trespass is a nullity. 3-188

47. Of one who has exhausted his preemptive right is invalid. 4-560; 5-16

48. But one, allowed a preemptor for lands open to settlement and entry. 5-16; 6-298, 617, 785, 792; 7-395; 8-258

49. Though illegal, exhausts the preemptive right. 6-298

50. Made through the consent and procurement of the preemptor exhausts the preemptive right and renders a subsequent filing illegal. 12-110

51. The right to file, exhausted by filing made through agent. 3-391

52. Made without the authority or knowledge of the preemptor does not exhaust the preemptive right. 2-620; 7-503; 9-129

53. A declaratory statement filed with the receiver during the temporary ab-

sence of the register and duly made of record serves the purpose intended by law and exhausts the right of filing. 9-41

54. Made by an alien confers no right under the preemption law as against an intervening adverse claim. 24-60

55. By one foreign born who has not declared his intention of becoming a citizen becomes valid if such declaration is made prior to the intervention of an adverse right. 11-121

56. Of one qualified in the matter of citizenship relates back to settlement and legalizes the same, though made when the settler was an alien. 8-541

57. Made by one entitled to the rights of citizenship on compliance with section 2168. R. S., will not be canceled if the requirements of said section are subsequently observed. 8-60

58. By a minor with full knowledge of his disqualifications, who subsequently sells his relinquishment, exhausts his preemptive right. 11-562

59. Made during infancy is invalid, but the attainment of majority prior to the inception of an adverse right cures the invalidity. 6-602; 17-207

60. Failure of both the settler and his executor to make, until after the discharge of the latter precludes the assertion of a preemption claim. 6-671

61. On land embraced within the existing entry of another confers no right as against the prior entryman. 12-600

62. Should not be allowed, on allegation of prior-settlement right, for land covered by the entry of another without a hearing to determine priorities. 5-526; 6-98, 330; 7-140; 8-528, 623; 11-452; 12-684

63. May be allowed subject to the preference right of a contestant. (See 15-421.) 7-46

64. Where the right to make, is accorded as against a prior homestead entry such action does not require cancellation of the entry, as it may stand subject to the right of the preemptor. 13-593

65. For land included within a former indemnity withdrawal and covered by a pending selection should not be allowed without due notice to the railroad company. 10-454

66. For land included within a prior indemnity selection should not be re-

corded until final disposition of the selection. 9-250

67. Allowed for land embraced within a railroad indemnity selection, pending on appeal, should be suspended until final disposition of the selection. 12-18; 14-418

68. On land withdrawn for railroad purposes confers no right under the preemption law. 13-214, 432

69. Three months after the restoration of land allowed for, in case of settlement on land reserved for railroad purposes. 14-230

70. Canceled for conflict with a reservation made for reservoir purposes may be reinstated on revocation of the withdrawal. 13-92

71. For land subsequently withdrawn for reservoir purposes under the act of October 2, 1888, may be suspended until it can be determined whether said land will be actually required for the purpose for which it was withdrawn. 12-438

72. A preemption, made subject to a withdrawal under the arid-land act of October 2, 1888, that is awaiting action by Congress, may be suspended until such action is taken. 23-483

73. Can not be received for land covered by an order for survey and offering as an isolated tract. 12-397; 14-458

74. Under the preemption law can not be allowed to embrace land within an Indian reservation. 12-563

75. Will be canceled where claim under is unsuccessfully set up to defeat the final proof of another. 5-260

76. Treated as taking effect on land when open to settlement, though not subject thereto when filed. 6-153

77. Preemptor may file for 160 acres, though claiming less at settlement, if contiguous tract is vacant. 1-405

78. May be valid as to one part and invalid as to another part of the land covered by it; as where A surrendered possession of the west half of a quarter, and B, who filed for the whole of it, took possession of the west half alone. 2-635

79. Made in the interest of another is illegal and must be canceled. 3-488; 11-548; 12-303

80. Failure of the local office to properly note of record will not defeat the rights of the preemptor. 15-31

81. Where the settler relinquishes the land in the face of a homestead claim he can not have his filing reinstated on ground that the contract consideration for relinquishment was not paid by the homestead claimant. 2-621

82. For alleged swamp land. Circular of December 13, 1886. 5-279

83. Disposition of papers in the local office. Circular of December 4, 1889. 6-558

II. Amendment.

84. Amendments of, allowed with great caution. 7-300

85. Amendment of, must be governed by the original intention of the settler. 5-643

86. Right to amend cut off by the intervening claim of another. 2-38, 576; 4-387; 11-477

87. May not be amended to include land not intended to have been covered by the original application. 5-643

88. May be amended to correspond with the actual settlement of the claimant in case of honest mistake. 9-98

89. Can not be amended in the presence of an intervening adverse right to include land excluded by former for want of contiguity. 6-621

90. In case of mistake and in the absence of intervening rights the lands intended to be taken may be substituted for those mistakenly filed upon or entered. 6-785

91. May not be amended where made for the land intended, though other land would have been included if the preemptor had known it was subject to entry. 7-298

92. Amendment denied where through want of diligence the true status of the land was not known. 4-496

93. Amendment of, not defeated by failure of the local officers to make a proper record of the application therefor. 9-98

94. Made by an administrator in his official capacity can not be amended so as to be a filing in his own right; but an application to so amend may be accepted as the filing of such party in the absence of any adverse claim. 17-90

95. Circular regulations with respect to amendment of. 8-187

III. Second.

96. Second, allowed only after careful scrutiny. 3-161

97. Second, not allowed in the absence of good faith. 4-387

98. Second, allowed for the same tract in the absence of adverse claim. (Overruled, 2-854.) 1-436, 439

99. Second, for same tract, with settlement alleged after sale of homestead from which the preemptor had removed, not allowed. 6-767

100. Second, for same tract not allowed. 5-413

101. Second, not permissible though the first may have been allowed prior to the adoption of the Revised Statutes. 4-189; 7-395; 10-188, 336

102. Second, prohibited though the first was on unoffered land. 6-20

103. Second, not allowed under section 6, act of March 3, 1853, except where the first was made before the passage of that act. 6-20

104. Second, allowed where first was on unoffered land, made prior to June 22, 1874, and canceled on relinquishment. (See 4-189.) 1-442

105. Section 2261, R. S., is a reproduction of former law with respect to second filings. 4-189

106. Second, prohibited by section 2261, not only on lands subject to private entry, but on all lands subject to preemption. 6-617

107. Right to make second, recognized if through no fault of the preemptor consummation of title was not practicable under the first. 4-9; 9-41; 10-338; 13-177

108. Second, may be allowed where, through no fault of the preemptor, the first fails by reason of conflict with prior adverse claim. 5-643; 6-168, 298, 611; 7-323

109. Second, will only be allowed where the claimant, by reason of a prior or adverse right, is unable to perfect title under the first. 11-121

110. Second, allowed where the first was illegal. 1-439; 4-116

111. Second, not allowed where the first failed through the fault of the preemptor. 4-114; 7-30, 289, 316

112. Second, can not be allowed, in the presence of an adverse claim, to one who abandons the first because made without prior settlement on the tract covered thereby. 12-536

113. Though the first was voidable, yet as its failure was the fault of the settler a second will be denied. 6-792

114. Second, permissible where the first was for land not subject thereto and the preemptor in good faith abandoned the same on discovery of such fact. 8-528

115. Second, allowed where first covered worthless land and due care was manifest. 1-433

116. Second, not allowed on account of untillable character of land where there has been no cultivation. 3-379

117. Second, will not be allowed on the ground that the land included in the first is not habitable unless it is clearly shown that the settler, in exercise of ordinary diligence, was unable to discover the true character of the land. 11-45

118. A preemptor may file but one declaratory statement on the same or on another tract; applied to a case where second filing was offered because settler found it impossible to raise good crops on his claim. 2-854

119. The right to make second, may be accorded where failure to perfect title was due to the ill health of the preemptor. 10-17

120. Second, not allowed to one who, after transmutation of the first, relinquished the homestead entry. 6-570

121. A preemption filing that is subsequently changed to a homestead entry exhausts the preemptive right. 19-111

122. Second, allowed where the first did not correspond with the settlement. 3-93

123. Second, allowed where the first was for land subsequently included within an Indian Reservation. 1-450

124. Second, may stand, when made in good faith and allowed in accordance with existing rulings, where the first was made through mistake and subsequently relinquished. 10-229

125. A preemption entry allowed on a second, may be allowed to stand where it appears to have been made in good faith believing the right to make such filing

had been accorded by decision of the General Land Office. 22-278

126. Second, allowed where the first was illegal for want of settlement, but good faith appeared in alleging settlement. 6-168

127. Second, allowed where the first is abandoned on account of threats and actual violence. 9-85; 14-25

128. Second, allowed where the first, by mistake, was for land not settled upon and the right of amendment was defeated by an adverse claim. 7-38

129. Second, not allowed where the first was made upon a tract claimed by another, in the belief that such claim would be relinquished. 3-181

130. Second, not allowed to one who made first before declaring intention to become a citizen, but subsequently cured the defect. 6-15

131. Made in good faith by a minor, but abandoned when the fact of minority is discovered, is no bar to second. 11-317; 14-411

132. Second, not allowed to one who, after attaining his majority, transmuted a preemption claim based on a filing made during infancy. 6-602

133. Second, not allowed where the first was illegal because the preemptor removed from land of his own in the same State to reside on the land embraced within said filing. 7-316

134. Right to make second, not considered without application for some tract. 4-310; 5-251

135. The validity of a preemption, that has passed to patent will not be questioned on behalf of one claiming under a second filing made by the same party. 18-54

IV. Osage.

See INDIAN LANDS, V.

136. Circular regulations. 5-581

137. On Osage land exhausts right under the preemption law. 5-537

138. Second, not permissible to one who has formerly exercised the right. 7-30

139. Second Osage, permissible where the first is in good faith abandoned on account of the intervening adverse claim of another. 10-150

140. Osage, must be made within three months after settlement to afford protection. 5-581; 9-281

141. Time under amended Osage, begins to run from the date when the amendment is allowed. 10-624

142. Failure of settler on Osage land to make, within three months after settlement subjects his claim to any other valid intervening right. 11-396

143. Time within which Osage, is required to be made will not run where the local office is closed and the commissioner so directs. 11-256

144. Where two claimants for Osage land are each in default in the matter of, the one who makes the first has the better right, subject only to defeat in case of failure to submit proof within six months. 11-62, 275

FINAL PROOF.

See ALIENATION; NATURALIZATION, 37-38;
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I. Generally.

1. Rules to be observed in passing upon. 5-426; 9-123

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8. Circular of October 21, 1890, under the act of October 1, 1890, for the relief of certain settlers on the public lands. 11-402

9. Circular of January 24, 1891; prompt reports from local office required. 12-188

10. Rule 53 of Practice amended so as to permit submission of, during pendency of adverse proceedings. (See subtitle VIII.) 14-250

11. Under section 2294, R. S., as amended, circular of June 25, 1890. 10-687

12. Extension of time for submission of, act of July 26, 1894. (See circular of October 18, 1894.) 19-305

13. Circular of August 1, 1905, relative to final proof on claims within forest reserves. 35-63

14. The Territory of Alaska is constituted a land district by statute, and proof on entries therein must be made within said district. 23-194

15. The word "district," as used in the acts of March 3, 1887, and June 9, 1880, means *judicial* district, not land district. 6-138; 8-509

16. Regularity of, should be determined by the regulations in force at the date of its submission. 8-512

17. How made for land in two districts. 1-438; 2-90

18. Proceedings on, distinguished from contest. 2-580; 3-399

19. Should not be submitted pending contest. 5-176; 9-279, 299, 322

20. When rejected because made during contest, new proof, though confined to the same period, may be accepted and held to apply by relation to the date of the suspended entry. 7-175

21. Taken without authority or notice is void. 3-362

22. False swearing in making, punished. 4-211

23. Though technically complete, not always received. 5-52

24. Ready made, submitted before attesting officer without proper cross-examination should not be accepted. 20-76

25. On rejection, reasons to be indorsed on application. 1-483

26. Suspension of, pending further compliance is in effect a rejection of. 6-605

27. Failure of the local office to forward will not defeat the rights of the entryman. 14-349

28. To be transmitted at once to the local office when taken elsewhere. 5-220

29. Local office may require additional. 4-197

30. Decision on, must be rendered if claimant refuses to submit additional. 5-429

31. The local office should thoroughly scrutinize and test the reliability of all proofs presented. 3-211

32. Allowance of, by the local office does not preclude subsequent inquiry into the good faith of the transaction by the Land Department. 6-265; 13-383

33. Rejection of, by the General Land Office final in absence of appeal or motion for review. 5-421

34. District officers should take cognizance of facts within their personal knowledge in passing upon final proof. 3-223

35. Witnesses and claimants to be cross-examined. 5-178

36. On direct examination being full and explicit, may be accepted although the cross-examination is not in compliance with the regulations. 6-787

37. Under circular of December 15, 1885, not fatally defective for want of written cross-examination if made before the local office and accepted by it. 9-189

38. A certificate of the officer before whom the proof was taken that the witnesses were duly cross-examined accepted under the circular of December 15, 1885. 8-512

39. Not defeated by absence of jurat from cross-examination when the testimony was evidently sworn to. 6-787

40. Must be clear and explicit, showing compliance with the law in all essential requirements. 4-253; 6-120, 549

41. Where a witness is asked to give a categorical answer to an interrogatory, he should be permitted to state such facts and circumstances in explanation thereof as in his opinion make the categorical

answer the correct one to the question he is required to answer in such form. 34-133

42. Good faith essential in all cases; but no fixed rule can be formulated as to what constitutes good faith. 5-207; 6-121, 310

43. Acts done on land prior to entry considered as indicative of good faith. 5-238

44. Evidence as to acts performed after the submission of, may be considered only for the purpose of discovering the intentions of the claimant prior to that date. 12-647; 13-211

45. Absence from the land after the submission of, does not necessarily indicate bad faith. 6-224

46. Good faith may be shown by acts performed after submission of. 9-436

47. Submission of, at a particular time, in order to leave the land, not necessarily inconsistent with good faith. 8-508

48. Should receive special scrutiny when made within the shortest possible period. 4-347; 5-349

49. Submission of fraudulent, conclusive of rights under the entry. 9-527

50. When prematurely submitted, new proof will be required. 6-330

51. New proof must show compliance up to the time of its submission when the former proof was found insufficient on its merits. 6-155

52. When defective through no fault of claimant, new, may be made showing compliance up to submission of former, though compliance subsequently can not be shown. 6-28, 155

53. Taken before business hours on the day advertised is irregular and makes new proof necessary. 7-249

54. Taken outside of office hours may be considered, where so taken because the witnesses could not attend at any other time, and their testimony was submitted with due opportunity for cross-examination by the adverse claimant. 22-436

55. When new, is submitted pending appeal from rejection of the first, the department will pass on the merits of the case as shown by whole record. 9-436

56. If found insufficient and bad faith is not apparent, supplemental evidence may be submitted in the absence of protest or adverse claim. 10-183

57. Allowed on proof submitted after due notice should not be canceled on finding the evidence as to residence insufficient, but suspended and further proof required. 8-202

58. Supplemental proof of residence may be submitted where no adverse claims exist. 11-312

59. Supplemental, should be required where the testimony is evasive and incomplete. 4-477; 5-215; 10-1

60. Supplemental, showing due compliance with law prior to the submission of the original, may be submitted in lieu of new proof where the entry was allowed, payment made, and the new proof not called for until four years thereafter. 10-213

61. When rejected with the privilege of submitting supplemental, the entryman may refuse to furnish such proof and appeal, but if the final decision on such appeal is adverse, the right to submit supplemental proof will not be allowed. 13-211

62. On submission of supplemental proof a special agent may be present and cross-examine the witnesses. 10-30

63. Under act of January 31, 1885, made as in other cases. 4-16

64. A final affidavit returned for correction, and again filed when corrected, takes effect as of the date when first received, where, in the meantime, the fees and purchase money are retained by the local office. 17-366

65. If the final certificate bears a date later than the proof, the entryman may show by his own affidavit that he had not transferred the land at the date of the certificate. 9-615

66. Proof of nonalienation between the date of submitting final proof and issuance of certificate should not be required if such proof was sufficient when made and the claimant had at such time complied with the requirements of law. 8-475

67. Having been lost, a duplicate may be substituted without republication. 6-794

68. In making substituted, to supply testimony lost through no fault of the claimant, the testimony of said claimant may be taken before a clerk of a court of rec-

ord outside of the land district in which the land is situated, and the testimony of his witnesses taken within said land district, with a view to equitable action on the entry, if the proof so submitted is found satisfactory. 19-390

69. A demand on the register may be properly made for the production of lost, and if not secured thereby the contents of the same may be shown or new proof submitted. 22-133

70. An incorrect statement as to citizenship, made under a misapprehension of the law, may be excused. 7-471

71. Evidence as to filing declaration of intention to become a citizen, furnished in homestead proof, may be accepted in subsequent preemption. 8-233

72. New objections to residence shown not raised by the department after the claimant has fairly met those made by the General Land Office. 6-606

73. When submitted, may be attacked for improper absence, under the act of June 4, 1880. 1-434

74. Failure to submit, in due time excused where the default was caused by error of the local office. 1-459

75. Failure to submit, within statutory period not treated as default, where the claimant appears on the last day of such period, within business hours, and finds the receiver's office closed contrary to the regulations, and thereafter submits proof on the next business day. 24-46

76. Regularly submitted, sworn to, and accepted by the local office should not be rejected for want of register's signature to the jurat. 6-147

77. Action of the General Land Office on, should cover the sufficiency thereof as well as other questions affecting its validity. 8-612

78. Should not be accepted while the survey of the township in which the land is situated is suspended for investigation. 12-633

79. Submitted during suspension of township plat may be received and held awaiting removal of such suspension, and on such removal be accepted, if otherwise satisfactory, on execution of new final affidavit. 14-705

80. Offered pending suspension of township plat. 5-540

81. Instructions as to the manner in which payment may be made and final receipt issued on the submission of, under suspended entries made within the formerly recognized limits of the Northern Pacific east of Duluth. 26-488

82. May be submitted on behalf of entryman under the homestead or preemption law, who has become insane, by any person authorized to act for him during such disability. 6-550

83. An erroneous description of the land in the final affidavit and the testimony of the witnesses will not make new proof necessary, the land being properly described in the published notice, and the proof intended for the land occupied. 6-782

84. Rights not prejudiced by delay in the issuance of final certificate. 6-218; 7-292, 455; 8-268; 10-142; 12-42

85. Submission of, showing full compliance with the law secures the equitable title to the land. 17-293

86. An applicant under the timber and stone act is entitled to a copy of the final proof submitted on his application. 34-133

II. Notice.

87. Matters essential in notice of, may not be waived by the Land Department. 6-111

88. The requirement as to publication of notice is statutory and can not be waived. 6-345; 22-548

89. Taken without notice is void. 3-362

90. Notice of intention to make, is an invitation to all parties to appear and show cause why the entry should not be allowed. 2-580, 594, 596; 3-247; 5-407, 587; 6-379

91. Publication of notice under act of March 3, 1879, similar to the requirements of the mining law. 1-108

92. The notice by publication of intention to make, is in harmony with the notice required of contestants. 3-141

93. On submission of, relates back to notice of intention to make, and protects the claimant in the absence of any prior intervening rights. 1-461; 12-220; 13-288; 16-520

94. In the presence of an adverse claim arising prior to notice of intention to sub-

mit, the claimant is held to a strict compliance with the statutes in the matter of submitting his proof within the statutory period. 3-92; 9-279; 18-373

95. Publication of notice and the due proof thereof should appear. 7-488

96. Sufficiency of publication must be determined under the regulations in force when the advertisement is made. 6-455

97. Posting in the register's office an essential. 5-399

98. Publication of notice can not operate to revive a controversy settled by a former decision between the same parties. 2-594

99. The published notice must state definitely before whom and at what place the proof will be made. 6-345; 7-197

100. A proper description of the land in the published notice is essential. 3-460; 4-406; 6-6; 7-467

101. Misdescription of land in published notice requires republication, when the proof may be accepted as made, in the absence of protest. 6-705; 7-485, 539; 9-434; 10-468

102. May be accepted as submitted after republication by the transferee where the land was misdescribed in the published notice. 8-415

103. In case of defective notice of, on a homestead entry, by reason of the erroneous description of part of the land, under which proof was made and certificate issued, and the giving thereafter of a new and correct notice, the certificate will stand as of the date issued, where the proof is satisfactory and it is not shown that the right or claim of anyone has been prejudiced; and inquiry as to the character of the land will not be allowed to include evidence of any exploration or discovery of mineral thereon subsequent to the date of said certificate. 30-216

104. The Crosthwaite case cited and distinguished. 6-313

105. Six insertions of notice in weekly paper required. 1-656; 3-112; 6-455

106. Under the circular of October 1, 1880, five insertions only were required of notice published in a weekly paper. 6-455

107. Notices of, must be published in papers nearest the land. 3-155; 5-503

108. Notice of, published in paper nearest the land by the usual route of travel. 1-108

109. New publication and proof required where the publication was not made in the paper published nearest the land. 7-314

110. Notice of, to be published in established *bona fide* papers having an actual and legitimate circulation in the vicinity of the land. 3-52

111. Register to designate paper for publication of notice. 3-520

112. Instructions of August 11, 1909, relative to publication of final proof notices and discretionary authority of registers in making selection of newspapers for that purpose. 38-131

113. The local officers must designate, for the publication of notices of final proof, reputable papers of general circulation nearest the land applied for, the rates of which do not exceed the rates established by local law for the publication of legal notices. 2-205

114. Publication of notice must be in a *bona fide* newspaper in general circulation published nearest the land, whether such paper is published in the county where the land is situated or otherwise. 7-59

115. Notice of intention to submit, must be published in reputable newspaper having a general circulation. 26-393

116. Notices of, must be published in the newspaper proper, and not in the supplement. 3-155

117. Notice must be published in the paper designated and proof made on the day fixed. 7-232

118. Written interlineation of witness's name in published notice a fatal defect. 6-379

119. New notice and proof required covering the testimony of a substituted witness. 7-327

120. Republication of notice required where the name of one of the witnesses was not properly given in the published notice. 8-204

121. A slight mistake in the spelling of the applicant's name in the published notice of intention to submit, is immaterial, where no one is misled thereby, and the identity of the applicant is undisputed. 29-16

122. Special notice of intention to submit, should be given adverse claimants of record, and proof submitted without such notice requires republication with special citation to the adverse claimant. 11-172

123. Special notice of intention to submit, should be given adverse claimants of record. 3-196; 9-495

124. Personally naming an adverse claimant in the published notice of intention to submit, is not a sufficient compliance with the rule requiring such claimant to be specially cited. 15-174; 18-525

125. A second applicant for a tract is not an adverse claimant of record and entitled to special notice of intention to submit, where the prior application is allowed and the entry is commuted for town-site purposes. 21-434

126. Special notice of intention to submit, is only required to be given to parties in interest. 12-538

127. No one but a claimant of record is entitled to special notice of the intention of a homestead entryman to submit. 29-16

128. Under section 3, act of June 3, 1878, the register is required to furnish a timber-and-stone applicant a copy of the notice, which the applicant shall cause to be published as prescribed by the act; and where an applicant acquires no knowledge that notice has been issued until after the date set for the submission of proof, he is not in default merely because he fails to submit proof on such date. 33-365

129. Usual notice of, sufficient as against the indemnity rights of a railroad. 3-226

130. Notice by publication, without special citation of a railroad company, held sufficient. 3-277

131. Special notice of, should be given a railroad company that is asserting a right under its grant. 4-256; 9-71

132. Pending railroad selection of record entitles the company to special notice of intention to submit. 5-396; 7-149; 12-18

133. Special notice of intention to submit, should be given a railroad company where the land is embraced within a pending indemnity selection. 14-111; 22-212

134. Where a withdrawal of lands for the benefit of a grant is of record, the grantee should be specially cited when

proof is tendered under an adverse settlement claim. 20-259

135. A railroad company is not entitled to special notice of intention to submit, under a homestead entry of an unselected tract included within an existing indemnity withdrawal. 17-270

136. A wagon-road company is not entitled to special notice of a settler's intention to submit, if it has no specific claim of record for the land claimed by the settler. 19-490

137. Notice of intention to submit, held good as against a railroad company, where the "general land agent" of the company is specially cited, and a protest against the proof is subsequently filed by said agent, and no exception is taken therein as to the service of said notice, nor objection made thereto on appeal. 22-5

138. Special notice of, not required to be given a wagon-road company that has no specific claim of record for the tract involved. 13-174

139. Not taken at the place designated in the notice is in effect taken without notice and void. 13-612

140. Must be taken at the time and place designated in the notice. 3-484; 5-348, 361; 6-110, 156, 232

141. Made the following day sufficient when by mistake Sunday is designated as the day for submission of. 8-233

142. Taken at day later than first named is not open to objection if the change of date appears in subsequent publication duly made. 9-646

143. When not made on day fixed, may be accepted, in the absence of protest, on republication and new affidavit covering the time up to the date of entry. 7-417

144. The necessity for republication where not made on the day fixed obviated by subsequent hearing. 7-559

145. Republication required where not submitted at the time fixed and the proceedings are continued, but not to a day certain. 10-418

146. Preparation of part of the testimony on the day before that fixed for taking does not affect regularity of, where it is completed at the time and place and before the officer designated. 10-119

147. New, after republication will be required where the proof is not taken on

the day fixed and a portion thereof not taken before the officer designated. 7-420

148. May be taken within 10 days after the time advertised where accident or unavoidable delay prevents submission on the day fixed. (Act of Mar. 2, 1889, and circular thereunder.) 8-316, 581

149. Section 7, act of March 2, 1889, is retroactive, and legalizes proof taken within 10 days following the date advertised, in pending cases, where unavoidable delay prevents compliance with the notice. 10-301, 597

150. There is no law or rule of the department that warrants the local officers in extending the time for taking, beyond 10 days from the time set therefor in the advertisement. 20-343

151. If not submitted within 10 days following the time fixed therefor new publication of notice must be made. 29-323

152. Where the evidence of the witnesses is not taken before the officer designated it may be accepted after republication in the absence of objection. 6-622; 7-20

153. If taken by an officer not named in the notice, it must be at the time and place designated and the officer advertised must certify to the absence of protest. 7-327

154. When made at the time and place designated in the notice, but not before the officer named therein, may be accepted after republication in the absence of protest. 7-371

155. In publishing notice of intention to submit, it is the fault of the register if the proper officer before whom it will be taken is not designated therein. 8-483

156. The cost of republication of notice of intention to submit, must be paid by the register where the defect necessitating republication might have been avoided by proper diligence on his part. 40-459

157. Accepted after new publication of notice and corroboratory affidavits where the first notice is insufficient. 5-503

158. Submitted on indefinite notice may be submitted after republication in the absence of protest. 9-439; 10-372, 587; 12-213

159. Accepted in absence of protest, after new advertisement, where submitted through fault of the local office on defect

tive notice and due compliance with law is shown. 6-345

160. Having been submitted without protest and after due notice, further advertisement is not required where supplemental proof is called for. 6-313

161. Order for new publication and proof should not be made before the sufficiency of the proof submitted has been, in all respects, considered and adjudicated. 9-434

162. Where certificate has issued and the proof is afterwards found defective in the matter of notice, new advertisement and proof will be required showing compliance up to the date when the certificate issued. 6-155, 382

163. Notice of intention to submit preemption, does not operate to prevent the allowance of a homestead entry for the land covered by the filing. 8-226

164. Published notice of application to make preemption, so far reserves the land as to prevent its being properly entered by another pending consideration thereof. 8-406, 414; 9-175, 215; 17-381

165. Published notice of intention to make, saves the rights of the preemptor during the period so fixed as against the intervening adverse claim of another. 16-520

166. The reservation effected by notice of application to make, is for the benefit of a preemptor, and does not operate as a segregation of the land, as between third parties whose claims arise independently of the preemptor. 22-571

167. Final preemption certificate should not issue during the publication of notice, by an adverse claimant, of intention to submit proof under the preemption law. 17-171

168. Where the notice of intention to submit proof upon a homestead entry stated that commutation proof would be offered and the entryman submitted final five-year proof thereunder, republication of notice will be required. 40-282

III. Place of Taking; Officer.

169. Testimony in final proofs taken by the local officers must be taken at the local office unless they have been otherwise

expressly directed by the Land Department. 2-204

170. Under the acts of March 3, 1877, and June 9, 1880, must be taken where the court is held and the seal kept. 3-330

171. Circular of April 12, 1895, issued under the act of March 2, 1895, authorizing the appointment of commissioners to take. 20-309

172. Circular of March 26, 1902, under act of March 11, 1902, relative to officers before whom affidavits, proofs, and oaths may be made. 31-274

173. Directions given for the preparation of instructions to local officers, directing that henceforth no notice be issued by them authorizing proof to be taken before a judicial officer at any place other than his regular official place of business. 33-278

174. Circular of November 4, 1904, relative to place of taking proofs by judicial officers. 33-280

175. Instructions of March 24, 1905, to commissioners, judges, and clerks of courts, relative to taking proofs. 33-480

176. Paragraph 10 of circular of March 24, 1905, relating to the admission to practice before the Land Department, as agents or attorneys, of officers authorized by section 2294, R. S., to take final proofs, modified. 33-653

177. Instructions of March 1, 1907, relative to proofs, affidavits, and oaths executed before deputy clerks of courts. 35-436

178. The act of May 26, 1890, authorizing proof before "any commissioner of the United States Circuit Court," does not change existing provisions defining the place for taking such proof. 11-361

179. The circular of June 25, 1890 (10 L. D. 687), issued under the act of May 26, 1890, must be construed to mean that said act does not authorize the making of the proofs and affidavit mentioned therein before a commissioner outside the county and State or district and Territory in which the lands are situated, except where the lands are within an unorganized county. 11-361

180. The act of May 26, 1890, authorizing, to be taken before commissioners of the United States circuit courts, designates a new officer for such purpose, but

does not change existing regulations as to the place of taking such proofs. 27-577

181. In case the officer named in the final proof notice, before whom the proofs are proposed to be taken, has two or more established places for the transaction of business within the jurisdictional limits, and carries on his official business at such places at regular, fixed times, the requirement of paragraph 3 of the circular of March 24, 1905, that final proofs shall be made before the officer named at "his regularly established place of business and not elsewhere," will not prevent the proof being taken at any one of such established places of business that may be designated in the notice. 35-344

182. When made before clerk under act March 3, 1877, he must certify to absence of judge. 2-100

183. May be taken before judges and clerks of court by special provision of law. 4-211

184. Affidavit required in sections 2262 and 2301, R. S., when made before probate judge, must be certified by him as "clerk *ex officio*," 3-154

185. May be made before the proper officer of any court of record in the judicial district within which the land is situated. 6-133; 8-509

186. Where a county embraces territory in two land districts a claimant for land in one district may, under act of March 3, 1877, make proof at the county seat in the other district. (See 1-438.) 2-90

187. The clerks of district courts in Dakota are authorized to take final affidavits in homestead and preemption cases whether or not the court holds sessions in the county. 2-200

188. The affidavit may be made before the judge of a probate court in Dakota at the county seat where the court is holden. 2-224

189. In preemption and homestead cases may be taken in Dakota before clerks of court where no court is held. 5-458

190. Under the circular of March 30, 1886, a county judge in Nebraska is not authorized to take preemption or commuted homestead. 9-586

191. May be made in *ex parte* preemption and commuted homestead cases before a clerk of the court, though such officer

appears as the attorney of the applicant. (See 4-299.) 3-95

192. Commutation, made before a notary may be accepted where notice of intention had been given and the order for publication made before the circular of March 30, 1886, reached the local office. 7-345

193. Desert-land, must be made before the local officers or the judge or clerk of court of the county in which the land is situated, or commissioner of the United States circuit court having jurisdiction over such county. 12-90

194. Evidence of witnesses in desert entry must be taken before the local office. 3-246

195. Testimony of desert claimant and witnesses may be legally required to be taken at the same time and place and before the same officer. 7-337

196. Evidence of desert claimant may be taken before officers other than district. 3-246

197. The claimant's affidavit and the testimony of the witnesses must be taken at the same time and place under desert entry. 10-598

198. Claimant may be required to appear before the local office and submit to a cross-examination (desert entry). 7-337

199. Officers authorized to take preemption. 4-473

200. Preemption final proof may be made before the clerk of a court, but not the affidavit required by section 2262, R. S. 2-622

201. Entire preemption proof to be taken before officer named in notice. 4-473; 5-361

202. Preemption affidavit should be made within the county in which the land is situated. 4-63

203. Can not be accepted where preemption final affidavit is made before a notary public. 12-560

204. No part of preemption, may be taken before a notary. 3-298

205. Testimony in preemption, may be taken before any officer competent to administer oaths. 3-429

206. Required by section 2262, R. S., must be made before a probate judge in

Dakota acting as clerk when at the county seat where the court is holden. 2-224

207. Required by section 2262, R. S., must be made before the register or receiver, but if made before a clerk may be cured by a supplemental affidavit. 2-622
(See subtitles II, IX, XIV.)

IV. Witnesses.

208. Witnesses must be disinterested and testify from their personal knowledge. 1-96

209. Careful examination of witnesses required. 5-220

210. Knowledge of witnesses should be tested by cross-examination. 4-253, 260

211. On offer of, special agent may be present and cross-examine the witnesses. 6-255

212. Local officers may use their personal knowledge as the basis for cross-examining witnesses. 4-260

213. Can not be considered without the testimony of at least two witnesses as to the settler's qualifications and compliance with law. 7-88

214. Based on evidence of witnesses not named in the notice is invalid. 5-348, 609

215. In taking, the officer should test the witness's means of knowledge. 3-133

216. Dependence upon attorney for witnesses suggests collusion. 1-96

217. Element of weakness in that the witnesses do not live near the land. 5-449; 8-651

218. Irregularity in, caused by the substitution of a witness may be cured by new publication giving the names of the parties who did testify. 9-266, 646

219. Defect in, caused by the substitution of a witness may be cured by republication, and the proof accepted as made in the absence of protest. 8-475

220. In the submission of final town-site, the testimony of a substituted witness can not be accepted without further advertisement, unless two of the advertised witnesses testify. 22-247

V. Transferee.

221. Right to submit supplemental, accorded to a transferee in the absence of adverse claims. 8-641

222. Where irregularly made, supplementary proof may be submitted after republication by a transferee, showing that the entryman complied with the law during the period covered by the final proof, and the facts as to the transfer. 8-18

223. Irregularly submitted by the entryman (now deceased) may be accepted in the absence of protest on new publication of the transferee. 7-391

224. May be accepted in the absence of protest on new publication by the transferee where the first was not sufficient and the whereabouts of the entryman can not be ascertained. 7-197

225. When not taken before the officer designated and the entryman refuses to respond to further requirements, the transferee may file the certificates of the officer designated and the one officiating that no protest was filed against the entry, or, in the absence of such certificates, readvertise. 11-266

226. Mortgagee may cure defect in, caused by the substitution of a witness by due advertisement of the names of the witnesses who testified, and such proof may then be accepted in the absence of protest. 11-581

227. A transferee may be accorded an opportunity to show the qualifications of the entryman. 11-3

228. Where the entryman fails or refuses to submit new proof, as required, his transferee may be permitted to show that the claimant had in fact complied with the law prior to transfer. 7-367

229. On requirement of new proof, a mortgagee may be permitted to show compliance with law by entryman, prior to submission of the original proof, where the entryman fails or refuses to comply with said requirement. 12-623

230. Mortgagee permitted to furnish supplementary proof as to the entryman's compliance with law prior to submission of, where the entryman failed to appeal from the rejection of. 6-776

231. Transferee may furnish evidence showing that on the day fixed for the submission of proof no protest or objection was made. 7-445

232. Mortgagee may submit evidence after due notice showing that the proof

was intended for land other than that included within the final certificate. 6-834

233. Further publication of notice by transferee permitted where the land, through no fault of the entryman, was misdescribed and the whereabouts of said entryman can not be ascertained. 6-770

VI. Continuance.

234. Submission of, may be adjourned by local officers on account of press of business, to a day certain. 6-512

235. Continuance of proceedings should be to a day certain. 6-806; 7-539

236. Continuance of proceedings to a day certain renders such proceeding continuous, and the final certificate issued at the close thereof will relate back to the beginning. 7-418

VII. Protest.

237. A protest serves to call attention to irregularities in, and for such purpose a regular contest is not necessary. 9-495

238. On protest against, the local officers may order a hearing. 1-86, 448; 7-483

239. On a protest against, it is a matter of discretion with the commissioner whether a hearing shall be ordered. 11-273

240. When the record shows a protest the local officers should order a hearing thereon at such time and place as may seem best in their discretion. 13-203

241. Informal protest against, may be recognized as the basis of a hearing. 15-41

242. Protest against, raises an issue that may be tried before the local office, and on appeal the commissioner is vested with due jurisdiction. 14-176

243. Protest against, may be acted upon by the local office though filed after the submission of the proof. 12-202

244. On the submission of additional, in accordance with the call of the General Land Office, to support an entry allowed by the local office, adverse testimony should not be received on behalf of a protestant in the absence of due order therefor. 12-305

245. If no protest is found in the record, it will be presumed that none was filed. 8-202; 9-339

246. Duty of clerk of court in taking, under protest. 3-479

247. A protestant against, may appear at the time and place mentioned in the notice and make his objection by cross-examining the applicant and his witnesses or by introducing counterproof, or by both. 2-596

248. Protestant against, not required, in the absence of an order under rule 35 of practice, to submit his testimony at time and place set for taking the proof. 9-273; 13-203

249. A hearing ordered on protest against final proof does not initiate a contest as contemplated by act of June 3, 1878, nor require publication of notice thereunder. 2-580

250. A protest against the allowance of, secures to the protestant no preference right of entry, in the event that such proceedings result in cancellation of a pre-emption declaratory statement. 22-188

251. In proceedings under protest against, the commissioner should pass on the whole case as presented by the record, including the sufficiency of the proof. 11-409

252. A protestant against, who sets up his own right to enter the land is bound to present at such time all objections against the proposed entry then known to him. 22-63

253. Proceedings on, can not be treated as *ex parte* where a protest is filed and evidence furnished thereunder. 14-176

254. A protestant against, who waives objection to the action of the local office in allowing new proof to be made, leaves the controversy to be determined on the testimony taken on presentation of the second proof. 16-320

255. In the disposition of a case arising on a protest against, where a hearing is ordered to determine priority of right, and evidence submitted, the rights of the parties as well as the regularity of the proof should be considered. 23-358

256. One who has submitted, under his filing is under no obligation to protest against the proof of another who subsequently initiates a claim for the land. 11-449

257. In proceedings under protest against, a decision of the local office that

the claimant is entitled to make new proof is not such an adverse judgment as will, in the absence of appeal, defeat his right to have the judgment of the commissioner on the sufficiency of the proof already submitted. 11-544

258. Where a homesteader dies during the pendency of proceedings on his protest against the final proof of an adverse preemption claimant, his heirs may perfect title on the final disposition of the adverse claim. 17-389

259. The Government may avail itself of, acquiesce in, or adopt the proceedings initiated and the proofs furnished by an individual in protest of final proof. 33-422

260. In proceedings under protest of a railroad company against, the qualifications of the settler at date of settlement will be presumed on appeal in the absence of any allegation to the contrary in the protest. 11-437

VIII. Adverse Claim.

See II, IX, HEREOF.

261. During the pendency of contest proceedings proof should not be submitted. 9-279, 299, 322; 11-256, 449, 452; 13-218, 236, 417

262. The local office is without authority to accept, for land involved in a case pending on appeal. 11-539

263. Should not be submitted while questions involving the right to make the same are pending on appeal. 4-265, 395

264. May be submitted during the pendency of a contest. See amended rule 53 of practice. 14-250

265. Rule 53, as amended March 15, 1892, makes the submission of, during a contest and after trial has taken place, optional. 19-194

266. When submitted under amended rule 53, it should be held for appropriate action in the event the entry is adjudged valid, and until such time no action can be legally taken thereon by way of proceedings on protest in the local office. 23-444

267. In the case of, taken during the pendency of a contest, under rule 53, the local office has no jurisdiction except to file said proof for action when the contest is finally closed. 25-285

268. The sufficiency of, taken under rule 53, or the right of the entryman to withdraw the same, should not be considered until final disposition of the pending contest. 25-285

269. The pendency of adverse proceedings suspends the running of time allowed a preemptor, by statute, for the submission of. The amendment of rule 53 permits the claimant, if he so desires, to submit proof during such proceedings, but no statutory right is lost by failure to take advantage of said amendment. 17-203

270. Submitted during the pendency of adverse proceedings on appeal and prior to the amendment of rule 53 may be considered under said rule where due notice is given and no adverse right exists. 14-411; 16-56, 541; 17-255; 18-504; 22-323

271. Amended rule 53 permits the submission of, during the pendency of contest proceedings where the hearing therein has been had, but is not applicable prior thereto. 21-3

272. One who submits, under rule 53, during the pendency of a contest involving an adverse settlement claim, must stand or fall on the showing thus made as to compliance with law during the period covered thereby. 26-64

273. Should not be received or considered while the land is covered by a pending indemnity selection. 7-149

274. Submitted concurrently with evidence taken under contest proceedings, and in part responsive thereto, may be considered under amended rule 53 where the charge as laid by the contestant is not sustained by his own evidence. 16-541

275. When adverse claimant enters protest hearing should be ordered at such time and place as may be fixed by the local office. 9-273

276. Adverse claimants must appear on notice of. 5-210

277. On submission of, after due notice, the failure of a railroad company to assert its claim is conclusive. 1-361, 475

278. Failure of a railroad company, claiming under indemnity withdrawal prior to selection, to appear and assert claim is conclusive. 5-407, 586, 658

279. Failure of a railroad company to appear in response to notice under the act of March 3, 1879, and assert its right

to land within the granted limits bars the subsequent assertion of such right. 8-389

280. Failure of railroad company to respond to notice of intention to submit, waives its right to deny facts set up in the proof; but if the record shows that the title passed under the railroad grant the award should be to the company notwithstanding its default. 9-416, 423, 427; 11-91, 633; 14-251

281. Failure of a railroad company to respond to the published notice of, will not defeat its title to lands which on the record are shown to have passed under the grant. 12-351

282. Failure of wagon-road company to respond to settler's notice of intention to submit, for lands included within Executive withdrawal precludes its subsequent objection to the allowance of the entry. 13-61

283. Should not be accepted during the pendency of prior proof submitted by an adverse claimant, but may be considered after final disposition of such adverse proceedings on republication and the execution of new final affidavit. 13-113

284. Submitted during the pendency of proceedings on appeal is irregular, but may be considered on final disposition of the adverse claim. (See 9-279, 299.) 9-57

285. An adverse claimant who objects to the submission of, before a clerk of court is not required to submit his testimony before said officer in the absence of an order under rule 35 of practice. 7-315

286. On offer of, an adverse claimant can not set up a claim that has been held invalid in a decision final as between the parties. 10-451

287. Where final proof is not made within the time prescribed right to make entry is cut off by an adverse claim. 2-593

288. Entry allowed during the pendency of, will not prevent the claimant from submitting further proof to show that he had in fact complied with the law. 14-165

289. When submitted for land embraced in a rejected railroad selection pending on appeal, the proof should be suspended and the claimant allowed to intervene in the selection proceedings under the Rules of Practice. 12-18

290. Additional, showing compliance since submission of, not permissible in the presence of an adverse claim. 6-760

291. Where there is an uncanceled adverse claim and the record shows that applicant for final proof has priority of inception, he must proceed under act of March 3, 1879; a prior adverse claimant is not bound to take notice of an application to make final proof. (See 11-449.) 2-595

292. Where final proof 21 months after filing failed to show satisfactory residence, but otherwise showed good faith, further proof (in the nature of an amendment) may be offered within the 33 months, notwithstanding an existing homestead entry of record. (Overruled, 6-623.) 2-623

293. On the rejection of, offered by two preemptors for the same tract without according priority to either, both may be allowed, in the absence of bad faith, to submit new proof. 6-424

294. A preemptor who gives notice of, and cites an adverse claimant, but fails to offer proof on the day named, is not debarred from subsequently submitting proof on due notice and in the absence of any valid adverse claim. 13-136

295. Submission of, may be deferred within the statutory period, though notice of making has been given and an adverse claimant appeared. 1-446

296. A preemptor who offers, in the presence of a valid adverse claim and fails to show compliance with the law must submit to an order of cancellation. 6-308, 623, 760; 7-483; 9-55, 501; 19-478

297. One who offers, in the presence of an adverse claim must submit to an order of cancellation if he fails to show compliance with law. 11-338; 12-627; 14-516; 16-382

298. Withdrawal of, not permitted to defeat an intervening contest. 20-342

299. A preemptor who submits, in the presence of an adverse claim is not precluded from making supplemental proof if the adverse claim fails for want of good faith. 9-81

300. A homesteader who makes commutation proof in the presence of an adverse claim must submit to an order of

cancellation if his proof is found insufficient. 13-323

301. In proceedings before the local office, where an adverse claimant who discloses his interest applies to intervene, he should be made a party, though such action may call for a continuance of the case. 12-488

302. A party who does not appear to protest against, on the submission thereof, but subsequently files a contest against the entry, is not entitled to have the claimant placed on the witness stand for the purpose of cross-examining him on his final-proof testimony. 21-458

303. On the submission of, under an order of republication, the proof as originally made should not be accepted in the presence of a protest against such action by an adverse claimant. 23-189

IX. Equitable Action.

See EQUITABLE ADJUDICATION, VII.

304. If not made within the statutory period, the final entry (homestead) should be submitted to the board of equitable adjudication. 7-384; 8-626; 9-291

305. Equitable action on a homestead entry, under which proof is not submitted within the statutory period, is defeated by an intervening contest on behalf of an adverse applicant for the tract involved. (See 19-442.) 17-210

306. No such right is acquired by a contest against a homestead entry by one having no claim to the land, but who is seeking merely to secure a preference right, prior to cancellation of the entry, as will prevent the acceptance of proof on such entry, even though not submitted until after the expiration of the statutory period and the submission of the case to the board of equitable adjudication for appropriate action. 33-21

307. Where a homesteader, under instructions of the General Land Office, submits, after the expiration of the statutory life of his entry, and a protestant appears and objects thereto on the ground of the entryman's failure to submit his proof within the period provided by law, said protestant does not have such an "adverse claim" as will defeat equitable action. 19-442, 467

308. Where notice to show cause why an entry should not be canceled for failure to submit, within the statutory period has been issued, an affidavit of contest subsequently filed will not defeat equitable confirmation of the entry, if the showing made in response to the notice is satisfactory. 29-710

309. If a satisfactory showing be made by a claimant, within the time limited, in response to a notice to show cause why his entry should not be canceled for failure to submit proof within the statutory period, equitable confirmation of the entry will not be defeated by the initiation of a contest against the entry subsequently to such notice. 33-422

310. In case an entryman fails to comply with the law prior to the expiration of the time limited in a notice to show cause why his entry should not be canceled for failure to submit proof within the statutory period, proof of a subsequent compliance with law, in the face of a contest, although such contest was improperly allowed subsequently to the notice to show cause and prior to the expiration of the time therein limited, will not entitle the entryman to have his proof submitted to the board of equitable adjudication with a view to confirmation of the entry. 33-422

311. If submitted after the statutory life of the original entry and found insufficient, new proof may be made in the absence of bad faith, and if found sufficient the entry (homestead) may be sent to the board of equitable adjudication. 8-614

312. When submitted by deserted wife, the entry (homestead) may be sent to the board of equitable adjudication. 6-311

313. A deserted wife or minor child may make final proof as entryman's agent, the entry (homestead) to go to board of equitable adjudication. 2-81

314. Where made by an administrator and the final affidavit is executed outside of the land district by the heir, who was aged and infirm, the entry (homestead) may be submitted to the board of equitable adjudication. 7-18

315. Referred to the board where non-mineral and new final affidavit were executed outside the territory in which the

land is situated and the claimant is not chargeable with negligence. 6-710

316. Made up of testimony taken before an unauthorized officer and supplemental evidence taken outside the State may be accepted with a view to equitable action where the claimant's physical condition prevents the submission of further proof in regular form (preemption). 14-687

317. If not made within statutory period, the entry (preemption) should be submitted for equitable action. 8-255

318. If not submitted within statutory period, entry (desert) may be equitably confirmed where the failure is due to ignorance, accident, or mistake. 9-430, 617, 631

319. Where desert-land, is not submitted within the statutory period and the delay is satisfactorily explained, the entry may be equitably confirmed. 11-27

320. If not made within the statutory period, the entry (desert) may be equitably confirmed where the failure is due to obstacles that could not be overcome. 6-548, 801; 7-169; 8-432

321. May be accepted and entry (desert) sent to the board of equitable adjudication, in the absence of adverse claim, where reclamation is not effected within the statutory period and the delay is satisfactorily explained. 7-79

322. Where submitted after the statutory period and found insufficient, new proof may be made, and if found sufficient the entry (desert) referred to the board of equitable adjudication. 8-573

323. Opportunity to submit further, by desert entryman may be accorded with a view to equitable action where the entryman, through no fault of his own, fails to secure the requisite water supply within the statutory period. 12-241

324. New, may be submitted with a view to equitable action where that offered shows a failure to effect reclamation within the statutory period due to difficulties encountered in securing an adequate water supply. 13-30

325. Equitable action is not required on a desert entry on account of failure to submit and make payment for the land within the statutory period where such failure is due to an order of the General

Land Office postponing the day fixed for the submission of said proof. 17-388

326. Submitted out of time may be sent to the board of equitable adjudication where the failure is due to the intervention of a contest that is subsequently dismissed. 17-36

327. Failure of the claimant to make his own proof on the day fixed may be cured by action of the board of equitable adjudication where his witnesses appeared and testified at the time and place designated. 8-202

328. Where no cause is shown for failure to submit on the day fixed therefor, but the local office accepts the same, the entry may be equitably confirmed. 11-3

329. Where the testimony and final affidavit of the claimant were taken prior to the day fixed in the notice, on filing new final affidavit the entry may go to the board of equitable adjudication. 7-139

330. Failure to submit, on the day advertised may be cured by action of the board of equitable adjudication. 8-415

331. When not submitted on day advertised and the register certifies that no protestant appeared on the day fixed, the entry may be sent to the board of equitable adjudication. 6-745

332. Where not submitted through circumstances beyond the claimant's control on the day advertised, and no adverse claim exists, the entry may be sent to the board of equitable adjudication. 6-460, 782

333. Where the testimony of the witnesses, through mistake, was submitted on the day previous to that designated, but no protestant appeared, the entry may go to the board of equitable adjudication. 6-695

334. Failure to submit on the day designated having been once satisfactorily explained and the proof accepted without protest, the entry may go to the board of equitable adjudication. 6-629

335. Where the failure to submit on the day advertised was the fault of the local office and further publication by the claimant is not possible, the entry may be sent to the board of equitable adjudication. 6-806

336. When submitted after the day fixed and good faith is manifest, the entry may be referred to the board of equitable adjudication in the absence of protest or adverse claim. 7-326, 445

337. May be referred to the board of equitable adjudication where witnesses' testimony was not taken on the day or before the officer named but the claimant's evidence was submitted according to the notice. 7-482

338. May be accepted and the entry referred to the board of equitable adjudication where the proof was not made on the day advertised but new publication was thereafter made. 7-465

339. When not made on the day advertised, but was accepted by the local office prior to the regulations of February 19, 1887, the entry may be equitably confirmed. 9-297, 339, 629

340. Defect in, caused by failure to submit on the day advertised, must be cured by equitable action in the absence of evidence showing that the case is within the confirmatory provisions of the act of March 2, 1889. 10-596

341. Section 9 of the final proof rules should be construed so as to not require entries to be sent to the board of equitable adjudication if the proof was made before the promulgation of the circular of February 19, 1887, and falls within the protection of the act of March 2, 1889. 9-284

342. If made within 10 days of the date advertised, the entry need not, under the act of March 2, 1889, be sent to the board of equitable adjudication if the delay was unavoidable. 9-283

343. Where the testimony of the witnesses was taken on a day and before an officer not named in the notice, but was submitted, with the testimony of the claimant, at the proper time and before the officer designated, the entry may be equitably adjudicated. 10-296

344. Where the publication is made and the proof submitted outside of the county in which the land is situated, but good faith is manifest, the proof submitted may be accepted after republication and proof of no protest and the entry referred for equitable action. 13-552

345. May be accepted in the absence of protest and the entry equitably confirmed where the proof is regularly taken, except that on account of sickness the claimant's evidence is taken at her residence in accordance with notice given by the officer taking the same. 12-102

346. An entry allowed on proof taken before an officer not authorized to act in such capacity may be referred to the board of equitable adjudication in the absence of other objection thereto. 8-406, 411, 483, 519; 10-183; 11-299, 539, 578; 27-577

347. Entry may be referred to the board of equitable adjudication where the claimant's evidence was not submitted before the officer named but the testimony of the witnesses was taken in accordance with the notice. 7-485

348. Entry submitted to the board of equitable adjudication where nonmineral and new final affidavit were executed outside of the Territory, and negligence is not attributable to the claimant in making final proof. 6-710

349. Irregularly submitted by the entryman (now deceased) may be accepted in the absence of protest on new publication by the assignee and the entry referred to the board of equitable adjudication. 9-273

350. May be accepted and entry referred to the board of equitable adjudication, in the absence of protest, where the day fixed for its submission was a legal holiday and proof was made the day following. 7-288

351. Where, through mistake, Sunday was designated for the submission of, and it was made the day previous, the entry may be referred to the board of equitable adjudication. 7-531

352. Where part of the land was misdescribed in the notice and testimony the entry may be referred to the board of equitable adjudication after new publication by the transferee. 7-462

353. Where notice of a decision holding an entry for cancellation for failure to submit, within the statutory period is not given, an opportunity for the submission of such proof may be allowed and the entry equitably confirmed if within the rule. 10-548

X. Commutation.

See XV HERED.

354. Circular of October 18, 1907, relative to commutation proof. 36-124

355. Sufficiency of, must be determined by the local officers before transmittal to the General Land Office. 5-610

356. Must be such as is required under the preemption law and affirmatively show due compliance with all requirements. 4-347; 5-676; 8-651

357. Sufficient on commutation if it shows settlement and cultivation satisfactory under the preemption law, though residence was not established within six months after entry. (See 8-566.) 1-39

358. Though not sufficient in the matter of residence to warrant patent under section 2291, R. S., may be accepted as authorizing commutation. (See 9-150; 39-418.) 8-45

359. If that made under section 2291, R. S., shows failure to comply with law, the claimant will be barred from submitting commutation. 9-150

360. Final five-year proof upon a homestead entry, found insufficient, may be accepted as commutation proof, upon proper payment, if a sufficient period of residence, substantially continuous, be shown next preceding the submission of the proof, provided the entryman was during such period a qualified homesteader. 39-418

361. The distinction between commutation and final proof in relation to the element of time within which full compliance with law may be shown demands a higher degree of proof of good faith on the part of an entryman who elects to complete his entry and acquire title within the limited period allowed by commutation than is required in the case of ordinary proof after five years' compliance with the law. 35-371

362. To entitle a commuting entryman to credit for constructive residence from the date of entry it must be shown not only that he established a *bona fide* residence upon the land within six months from the date of the entry, but that his actual presence on the land was thereafter substantially continuous to the date of submitting final proof. 35-252

363. A homestead entryman by his election to commute assumes the burden of showing full compliance with law in the matters of residence, improvement, and cultivation, and the proof will not be accepted by the Land Department unless it shows the substantially continuous presence of the claimant upon the land for the required period. 35-371

364. Commutation proof upon an entry made prior to November 1, 1907, submitted immediately after the expiration of 14 months from date of entry, showing that residence was not established until just before the expiration of 6 months and that the entryman was absent an intermediate period of about 2 months during the succeeding 8 months, will not be accepted as sufficient. 38-541

365. On acceptance of, by the department the original entry may, at the option of the claimant, remain intact or be commuted on the evidence submitted. 6-324

366. The unexplained fact that the claimant could not get the money to make payment does not excuse failure to submit proof on the day advertised, and new proof will be required. 7-367

367. Submitted prior to payment accepted in view of existing practice and other satisfactory reasons shown. 6-107

368. When rejected because irregularly submitted, with leave to submit new, the new proof, though covering the same period as the first, if taken after due notice, may be accepted *nunc pro tunc*. 7-231

369. If found insufficient, new proof may be submitted within the life of the original entry if bad faith is not apparent. 4-557; 5-608; 6-8; 7-87; 8-84, 651

370. Rejection of commutation proof does not necessarily, in the absence of an adverse claim and where sufficient time remains within which the entryman may comply with law and submit new proof, result in cancellation of the entry. 38-563

371. In the absence of fraud or concealment supplemental, may be submitted in case of a commuted entry allowed on insufficient proof. 10-492

372. Additional, as to residence allowed in case of commutation. 3-462

373. Right to submit new, not defeated by the appearance of a protestant who fails to show an adverse right. 6-763

374. In commutation, must be explicit as to residence. 4-478

375. Fact of commutation does not in all cases defeat the plea of poverty when offered as an excuse for absences and want of improvements. 6-170

376. Claim of good faith nullified by willful suppression of facts and commutation within the shortest possible period while alleging poverty. 6-265

377. Submission of, makes against the good faith of a claimant who pleads poverty as an excuse for absences from the land. 8-651

378. Made within the shortest period permissible invites special scrutiny. 4-347; 8-651

379. Offering, within shortest possible period not in itself a suspicious circumstance. 5-207

380. Of deceased entryman approved though the residence was not fully satisfactory. 5-215

381. Good faith indicated by the character of improvements. 7-232

382. The degree and condition in life of the entryman may be taken into consideration in determining whether the improvements show good faith. 6-310; 8-639

383. The words "cultivation" and "improvement" used synonymously by the department in considering cash entries. 6-420

384. As to cultivation should show the facts. 4-253

385. In commutation entry cultivation must be proved. 2-72

386. Must show cultivation or some definite act looking thereto. 6-420

387. Breaking accepted as proof of cultivation. 8-517, 551, 612

388. Breaking may be accepted as proof of cultivation under a commuted entry where settlement is made too late in the season for a crop. 10-526

389. Evidence showing improvements to secure pasturage accepted in lieu of the usual proof of cultivation where the land appears better adapted to such use than to the cultivation of crops that require tillage. 7-200

XI. Desert Land.

See DESERT LAND, II, d, f.

390. Circular regulations of June 27, 1887. 5-708

391. The regulations of June 27, 1887, are not retroactive. 9-399

392. Proceedings begun before the circular of June 27, 1887, was received at the local office may be completed under the previous regulations. 9-399

393. Publication of notice not insisted upon where the original entry was made prior to August 1, 1887 (circular of Dec. 3, 1889). 9-672

394. Circular regulations for the submission of, in case of final entry before survey. 12-376

395. Circulars of December 17, 1906, and May 18, 1907, relative to proof on desert entries. 35-352, 575

396. Circular of March 25, 1907, under act of March 1, 1907, relative to extension of time for making final proof on certain desert entries in Washington. 35-478

397. Circular of March 25, 1907, under act of March 1, 1907, relative to extension of time for proof on certain lands in Los Angeles land district. 35-479

398. Instructions of March 19, 1912, under act of January 26, 1912, extending time for proof on desert entries in Weld and Larimer Counties, Colo. 40-508

399. Instructions of February 13, 1912, governing extensions of time within which to make proof on desert entries in Benton, Yakima, and Klickitat Counties, Wash., under act of February 28, 1911. 40-428

400. Instructions of February 21, 1908, with respect to evidence of water rights in final proofs on desert entries. 36-282

401. Should be made within three years from date of initial entry, even though the official surveys have not been extended over the land. 11-414

402. Where made prior to survey, supplemental, without republication should be required after survey showing adjustment to the lines of survey. 11-414

403. Submitted on a desert entry of unsurveyed land, if found unsatisfactory, and the entryman fails to furnish supplemental proof as required, may be rejected, and the entry canceled. 23-410

404. Where part of the land is surveyed and part unsurveyed, final certificate should not issue for the surveyed portion only; but where proof is submitted as to the surveyed land, issuance of certificate should be suspended until the unsurveyed portion shall have been surveyed, when the entryman should be required to submit supplemental proof as to such portion, describing it by proper legal subdivisions and conforming it to the public survey.

36-187

405. Sufficient under entries made before the circular regulations of June 27, 1887, if in conformity with the regulations existing at the time the initial entry was made.

9-259

406. The proprietorship of sufficient water to insure permanent irrigation must be shown.

4-51; 5-120, 151; 20-449

407. Where the laws of a State permit the appropriation of water from navigable streams for purposes of irrigation, no ownership of the water taken from such a stream need be shown, only the appropriation thereof, and the ownership of the proper means for its distribution over the land.

27-516

408. Proof as to the ownership of the requisite amount of water to effect reclamation is sufficient where due compliance with local regulations is shown.

14-63

409. To establish the fact of reclamation the evidence must not only show that water has been brought upon the land, but that proper means have been supplied for the distribution of such water to each legal subdivision.

15-130

410. Entrymen in making proof of possession of a right to sufficient water to irrigate the land should only be required to furnish the best evidence obtainable at the time proof is submitted, which should also show that the entryman has done all that he is required by the laws of the State or Territory to do at that time for the maintenance of the right, and that he has actually used the water for the irrigation of the land.

35-305

411. Must show the character of the water supply and means provided for its distribution, with full information as to the number and length of all ditches on each local subdivision.

9-137

412. In addition to proof of cultivation, it must be clearly shown that the entryman has an absolute right to sufficient water to successfully irrigate the land; that the system of ditches to conduct the water to and distribute it over the land is adequate for those purposes; and that the land has been actually irrigated for a sufficient period of time to demonstrate the sufficiency of the water supply and the effectiveness of the system.

32-456

413. Where the proof shows that the entryman has cultivated and irrigated at least one-eighth of the land, and has constructed ditches, owns a sufficient water right, has brought water to the land, and is prepared to turn water upon the entire tract when it shall have been cleared and prepared for cultivation, he is not required to show further that water has actually been distributed over all the irrigable land in the entry.

38-426

414. The fact that it appears from the final proof that the water right of a desert-land entryman, relied upon to effect reclamation of the land embraced in his entry, is encumbered by a mortgage to secure the balance of the purchase price of said right, will not justify rejection of the proof, on the ground that the entryman has not "an absolute right to sufficient water to successfully irrigate the land," within the meaning of the departmental regulations, where it appears that the entryman is acting in good faith and the proof is in all other respects satisfactory.

35-181

415. Actual irrigation of the land is the essential requisite:

8-573

416. The actual irrigation of the whole tract must appear.

5-120, 151

417. Not required to show irrigation of rocky and hilly portion of the land.

5-481

418. Must show what proportion of each legal subdivision has been irrigated.

7-253; 11-58, 246

419. The fact of permanent reclamation warrants the acceptance of periodic flooding effected by means of a dam as a proper mode of irrigation.

9-419

420. Proof of crops raised as the result of irrigation is not required to establish the fact of reclamation.

5-120, 151;

15-535

421. Satisfactory when sufficient water is shown to have been conveyed upon the land. 3-385

422. Proof of crops raised treated as supplementing proof of irrigation. 5-151

423. Must show that the crop raised is the result of reclamation. 4-51

424. If crops are not shown, other evidence of a satisfactory character to establish the fact of reclamation must be furnished. 8-113

425. Any effort made in good faith to produce crops, which demonstrates the fact of reclamation, is cultivation within the meaning of the fifth section of the act of March 3, 1891. 32-207

426. A showing that as a result of irrigation there is a marked increase in the growth of the native grass, sufficient to support stock, is sufficient proof of cultivation. 32-207

427. Final proof which shows that because of irrigation there is "a marked increase in the growth of grass," or that "grass sufficient to support stock has been produced on all the land," will not be accepted as showing a compliance with the provision of the act of March 3, 1891, "that proof be further required of the cultivation of one-eighth of the land." 32-456

428. Where it appears from the final proof submitted on a desert-land entry that there has not been actual tillage of one-eighth of the land, and it is not conclusively established that the climatic and physical conditions are such that crops other than native grass can not be successfully produced thereon, and the proof fails to show the quantity of hay per acre produced from native grass by irrigation, or whether it is of merchantable value, the showing is not such as will justify the Land Department excusing actual tillage of one-eighth of the land and accepting the proof as sufficient. 35-15

429. The act of March 3, 1877, as amended by the act of March 3, 1891, requires that sufficient water be conducted upon the land to reclaim it and render it suitable for agricultural purposes, and that one-eighth of the land be placed under cultivation. 34-488

430. As proof of cultivation actual tillage must as a rule be shown. 34-488

431. Where cultivation of one-eighth of the area of a desert-land entry covering a smallest legal subdivision is rendered impossible by reason of physical conditions on the ground, proof showing that the entryman has cultivated all the area susceptible of cultivation may be accepted and the entry submitted to the board of equitable adjudication. 39-283

432. The act of March 3, 1891, contemplates that the expenditures in compliance with the requirements of section 5 thereof shall be for permanent improvements necessary to the irrigation, reclamation, and cultivation of the land, and as residence is not required, the erection of a dwelling house is not such a permanent improvement. 34-465

433. The testimony should show that the witnesses have personal knowledge that each subdivision of the land is irrigated. 10-598

434. Must show compliance with the law in form and spirit. 4-51

435. When the proof submitted shows reclamation as to a part of the land entered, and failure to effect proper irrigation of the remainder, the entry may be approved as to the tracts reclaimed, and canceled as to the remainder. 20-449

436. Proof showing acts of reclamation after the rejection of the original proof is new, and not supplemental, and should not be submitted without due publication. 7-167

437. Which does not show reclamation can not be accepted, although good faith may appear. 7-167

438. Commissioner may require additional proof. 7-337

439. Of claimant not made by attorney in fact. 5-19

440. Failure to submit, within the statutory period will not defeat the right to perfect the entry where part of the land is involved in a pending suit. 16-310

441. Allowed after the expiration of the statutory period. 4-261

442. The department can not extend the time in which to submit. 3-8;

8-432; 9-617, 632

443. In the absence of adverse claim, may be received though not made within the statutory period. 6-24

444. If proof of reclamation is not made within the statutory period, the intervention of an adverse claim defeats the right to perfect the entry. (See 16-366; 18-96.) 11-58

445. On failure to submit, within the statutory period the entryman should be allowed 90 days within which to show cause why his entry should not be canceled. 9-631

446. Submitted after expiration of the statutory period should be accompanied by an explicit explanation. 9-617

447. Where the statutory period for the submission of, has expired, and opportunity is given to submit the same within a specified time, it should be rejected if not presented within said time or good reason shown for delay. 14-40

448. May be rejected if not made in the manner prescribed by the regulations and before an officer authorized to act in such matter. (See Subtitle IX.) 14-40

449. An application for extension of time within which to submit final proof upon a desert-land entry, and the affidavits to support the same, must be executed before some officer within the provisions of the act of March 4, 1904; and where executed before a notary public can not be accepted. 38-189

450. A protest against the allowance of, on the ground of the failure of the entryman to secure a water supply and effect reclamation, must be dismissed if on the day advertised he does not submit final proof, and further time therefor exists under the statute. 22-599

451. The act of July 26, 1894, extending time for, applies to an entry made under the act of 1877, and where the entryman is entitled to the additional time provided for in the act of 1891. 24-435

452. A mortgagee who secures the foreclosure of a mortgage covering land embraced in a desert-land entry, prior to the time when, is due on said entry, may be regarded as an assignee thereof, and entitled to submit. 25-375

XII. Homestead.

453. The department has no authority to extend the statutory period within which to submit. 9-291; 10-400

454. Extension of time for, on account of forest fires, circular of February 2, 1895. 20-98

455. Failure to make, within the statutory period can only be cured by equitable action in the absence of adverse claims. 16-524; 17-210

456. Entry will be canceled at the expiration of seven years if proof is not made. 1-112

457. The time fixed by the statute for the submission of, will not run as against the entryman during a term of enforced absence from the land under a wrongful decree of ejectment. 18-186

458. Local officers are required to notify claimants in default with their final proof, giving them 30 days in which to show cause why their entries should not be canceled. 2-89; 3-136; 19-469

459. Entry canceled for failure to submit, within the statutory period, the failure being due to the entryman's arrest and conviction on a criminal charge, can not be reinstated in the presence of an intervening adverse claim. 15-550

460. Where a homesteader dies prior to the submission of, his entry should not be canceled for failure to submit said proof without notice to the widow; and if so canceled, the intervening entry of another, made with actual notice of the widow's claim, will not defeat her right to be heard. 27-572

461. A charge that a homesteader has failed to submit, within the statutory period will not be entertained where he has given notice of his intention to do so before the contest is filed. 21-167

462. The statutory period within which, should be submitted does not run during the pendency of an order suspending the official survey of the land. 21-169

463. Allegation of grasshopper ravages as excuse for a failure to offer within the time required must be founded on prior proper notice and absence from the land. 2-622

464. Can not be perfected under section 2291, R. S., until five years' residence on the entire tract can be shown. 12-645

465. In case of discrepancy between proof of military service submitted and the records of the War Department, the claimant, if unable to explain the discrep-

ancy, must show sufficient actual residence on the land to complete the requisite period. 11-368

466. Submitted by the administrator of the estate of a deceased homesteader, who is also heir of the decedent, regarded as made by said party in his capacity as heir, and therefore authorized by law. 22-404

467. The right of the heirs of an entryman to submit proof can not be delegated to another. 34-46

468. There is no law authorizing the submission of, by the heirs of a deceased entryman during the lifetime of his widow. 33-682

469. Where submitted on behalf of the heirs of a deceased entryman, during the lifetime of his widow, there is no authority for the issuance of final certificate and patent thereon in the name of the widow. 33-682

470. Where made on behalf of heirs, and it appears that the widow has abandoned her rights, the proof may be accepted, and the patent issue to the heirs generally. (See 26-436.) 22-426

471. The administrator of a deceased homesteader has no authority under the law to submit, for the benefit of devisees. 17-156

472. The administrator of the estate of a deceased homesteader has no authority to submit, for the benefit of the heirs. 16-556

473. No statutory authority under which an administrator may submit, and perfect claim of deceased homesteader. 6-573; 22-124

474. In the event of a homesteader's death, may be submitted by any one of the devisees, and if found satisfactory, the certificate should issue in the name of the devisees generally. 17-156

475. In the administration of statutes permitting the heirs of a deceased entryman to prove up and receive final certificate and patent, such certificate and patent will issue in the name of the deceased entryman in cases where the right to patent accrues prior to his death, and in the name of his heirs generally in cases where the right to patent does not accrue until after he has died, or where the entryman at the time of his death is not competent

to take title, although the right thereto may have been fully earned. 32-407

476. In the submission of, by a devisee the proof must be directed to the entry as an entirety and not confined to that part of the land claimed by the devisee. But proof thus submitted without objection should not be rejected without consideration or the allowance of a further hearing. 17-156

477. Not made by guardian if ward has reached majority. 4-331; 7-34

478. When orphan child of soldier comes to age before time of making, the final affidavit must be made by the beneficiary. 2-101

479. When made by guardian of minor child of deceased soldier, final certificate and receipt and patent should issue to "A. B., orphan child of C. D., deceased." 2-99

480. When made for the heirs the final affidavit should be made by one of the heirs. 1-103

481. New final affidavit required in case of infant children succeeding to the right to make. 1-89

482. A final homestead affidavit submitted by a nonresident heir is entitled to equitable consideration where executed outside of the district and State in which the land is situated, and it appears that the affiant, on account of extreme age and ill health, is physically unable to appear before an officer authorized by statute to act in such cases. 22-514

483. A homesteader unable, through poverty and sickness, to submit formal, or to execute final affidavit in the district where the land is situated, may file such affidavit, made before a judge or clerk of a court of record, with a view to the issuance of final certificate and equitable action thereon, it appearing that he has earned a patent to the land. 26-661

484. The failure of a homesteader to submit, under an expired entry, within the time fixed by the General Land Office, will not preclude equitable action on said entry where the proof is subsequently submitted and no adverse claim exists. 25-347

485. Deserted wife or minor child may submit. 2-81; 6-311

486. Under the acts of March 3. and July 1, 1879, as amended May 6, 1886.

5-125

487. If made on original entry, no further proof is required by the act of March 2, 1889, under an additional entry of contiguous land.

10-681

488. Which fails to show *bona fide* compliance with law in the matter of cultivation must be rejected.

36-255

489. Should be explicit in all details necessary to establish the fact of residence in good faith.

10-30

490. Where the proof submitted on an entry under section 2307, R. S., shows that the entrywoman never established residence, although notified in accordance with the decision in the Anna Bowes case that she would be required to begin actual residence within six months from notice, such proof is insufficient and will be rejected; but where the proof was offered prior to the expiration of six months from notice, the entry should not be canceled unless it be first ascertained that she did not begin actual residence within the prescribed period.

34-118

491. New, may be made where that submitted is found insufficient, but good faith is apparent.

10-400

492. Proof under section 2291, R. S., may be made where commutation proof has been rejected with right to submit new proof.

8-547

493. Can not be submitted on a homestead entry made under the act of August 23, 1894, of lands within an abandoned military reservation, prior to the appraisal of the reservation.

24-335

494. Supplementary proof explanatory of absences permitted.

6-809

(As to proof of nonalienation, see subtitle I.)

XIII. Osage.

495. The proof required to establish the fact of an actual settlement under the act of May 28, 1880, is no less in degree than the proof required under the preemption law.

10-36

496. Failure to submit, within six months after Osage filing renders the right of entry thereunder subject to intervening adverse claims.

6-111;

7-154, 277, 322, 457; 12-194

497. Failure to submit proof within six months after Osage filing renders the land subject to intervening claims, and such a claim will not be lessened by the fact that the settlement therein was made prior to the expiration of the period accorded the first claimant to make proof.

7-322

498. Failure to submit, within six months after Osage filing does not render the claim subject to the adverse right of a subsequent settler. (See 9-353.)

8-110

499. Failure to submit, and make payment within six months after Osage filing renders the claim thereunder subject to any valid intervening right.

9-353

500. Notice of intention to submit, given after the expiration of the period within which it should be submitted, but prior to the intervention of any adverse right, protects the claimant as against one who subsequently initiates an adverse claim.

13-288

501. Submission of, relates back to the filing of notice of intention to submit, where said notice is filed in time and the subsequent failure to make proof within the period fixed is not due to the claimant's negligence.

12-220

502. In the presence of an adverse claim arising prior to notice, the claimant must submit proof within the period fixed therefor.

9-279

503. Failure to submit proof and make payment within six months from Osage filing will not defeat the right of purchase in the absence of an intervening adverse claim.

7-277

504. Must be submitted under amended Osage filing within six months from the allowance of the amendment.

10-624

505. Where two claimants for the same tract are both in default in the matter of submitting, the one who first takes steps to cure the default is entitled to the land.

12-195

506. As between two settlers on Osage land who were both in default in the matter of submitting, the preference must be accorded to the one who was first in settlement and making proof.

7-308

507. Where two claimants are both in default, either as to filing or final proof, the superior right is in the one who first submits final proof.

11-275

508. That the receiver's receipt is dated one day beyond six months from date of filing will not defeat the entry where the proof was made within said period and good faith is apparent. 11-116

509. During the pendency of, the land is not open to the filing of another, and by such filing no rights are acquired as against the prior claimant. 13-644

510. It may be presumed that the first payment was properly tendered where the proof is rejected for reasons not involving payment and the record shows full compliance with law in other respects, but is silent as to such tender. 11-396

XIV. Preemption.

511. One who swears falsely in the premises forfeits the money paid for the land and also all right and title to the land itself. 2-598

512. Time for proof and payment on unoffered land fixed by the acts of July 14, 1870, and March 3, 1871. 1-379; 5-530, 553; 7-13; 11-195

513. Act of May 9, 1872, extended time for, in Minnesota one year. 1-380; 14-656

514. Various acts of Congress cited wherein additional time is given to prove up on unoffered land. 14-656

515. Is submitted in time if notice thereof is given within the statutory period. 1-461

516. Statutory period for the submission of, can not be extended by the department. 9-340

517. As between a preemptor in default as to, and a homestead claimant for the same land, also in default, in the matter of settlement and residence, the superior right is with the one who first takes steps to cure his default. 25-384

518. Failure to submit, and make payment for offered land within 12 months from settlement renders the land subject to the entry of any other purchaser. 9-377

519. And payment for offered land may be accepted though made more than one year after settlement. 5-473

520. Failure to make proof and payment before public offering defeats the right of preemption in the presence of an adverse claim. 3-265

521. The statutory period within which it should be made for unoffered land begins to run from the expiration of the three months after settlement. 8-393, 417

522. Land once "offered" and subsequently enhanced in price and not afterwards reoffered, is taken out of the category of lands subject to "private entry," and a preemption claimant therefor is entitled to 33 months from date of settlement in which to make final proof. 17-200

523. Failure to make proof and payment within the statutory period entails a forfeiture of rights in the presence of an adverse claim. 3-93, 370, 379, 499; 10-216; 19-166

524. No penalty, in the absence of intervening settlement, for failure to make proof and payment for unoffered land within the statutory period. 5-440

525. Failure to submit preemption, and make payment within the statutory life of a filing on unoffered land, does not defeat all rights under the filing, but subjects the claim to any legal settlement claim that may intervene. 25-384

526. An erroneous statement in the preemption certificate that the land is "unoffered" when in fact "offered" will not protect the claimant, in the presence of an adverse claim, if he fails to make proof in 12 months. (See 18-373.) 3-46

527. A preemptor in the submission of, is warranted in relying on the certificate of the register as to the "offered" or "unoffered" character of the land. 18-373; 19-478

528. Failure to submit and make payment within the statutory period will not defeat the right of entry in the absence of an adverse claim. 1-355, 401, 487; 8-417

529. Six months after close of military service in which to submit. 14-364

530. The provisions of section 2268, R. S., extending the period for the submission of preemption, in cases where the settler is called away from his settlement by military service, is not applicable to a claim initiated by an enlisted officer while on leave of absence from his company. 19-82

531. Time for submission can not be extended on showing failure of crops and applying for leave of absence. 14-207

532. An application for extension of time for payment may be submitted without waiting for expiration of filing.

14-509

533. Should not be submitted until after the expiration of three months from the filing of the township plat.

6-633

534. Satisfactory in all respects, but rejected on account of the suspension of the township plat, may be accepted on the execution of new final affidavit when the order of suspension is revoked.

12-647

535. In computing the time within which preemption should be made the period elapsing between the rejection of the settler's filing and the notice of its final allowance should be deducted.

20-225

536. A period should be fixed for submitting supplemental proof where the statutory life of the filing has expired.

7-71

537. Reasonable time for transmission allowed when final affidavit is executed before clerk of court.

1-483

538. Final affidavit not required to bear even date with entry when made before clerk of court.

1-482

539. In making substituted, the pre-emptor may execute the necessary affidavits outside of the land district in which the land is situated.

6-794

540. Delay in the execution of the final affidavit and making payment excused where caused by the advice of the local office.

10-421

541. On behalf of minors, sole heirs of a deceased pre-emptor, may be submitted by the guardian if by the laws of the State he is charged with the care of the minor's estate.

10-551

542. May be submitted by an administrator for the benefit of the heirs.

15-177

543. Right of an heir to submit, is not prevented by the fact that such heir may have sold his interest in the land.

14-468

544. Heirs may submit, though the pre-emptor died without executing the affidavit required in section 2262, R. S.

10-551

545. On the death of the pre-emptor, should be made for the benefit of the heirs of the deceased, and not for one of said heirs claiming as sole legatee.

6-823

546. Proof and payment must be made at the same time.

3-188, 299; 5-220, 221

547. Failure to make payment at time of, will not defeat an entry made under regulations which recognized such a practice.

9-615; 11-66

548. Tender of payment on submission of, will be presumed to have been made according to the regulations in the absence of any showing to the contrary.

12-492

549. Proofs accompanied with payment which are not acted upon by both local officers within one week after being received must be reported with reasons for delay.

12-183

550. The submission of, without payment of the purchase price of the land as required by law, will not protect the pre-emptor as against an intervening adverse claim.

24-153

551. Where not made before the local office and the delay in payment is explained, additional proof of nonalienation is not required if the law had been complied with up to the date of proof and the entryman had not then sold or agreed to sell the land.

11-66

552. After due notice of such intention a filing may be transmuted and proof offered thereon the same day.

1-400;

3-286; 6-379

553. On offer to make, the pre-emptor must be prepared to defend against all charges and claims, with the right to continuance if necessary.

3-141

554. Difference between proof that is fraudulent or merely defective noted.

3-411

555. Rejection of final proof does not always call for cancellation of filing.

3-451

556. In the absence of an adverse claim, and where a showing of good faith is made, a pre-emptor may be allowed to submit new, where the first is found irregular and insufficient, and for said reasons is rejected.

20-570

557. Further proof may be submitted where that accepted by the local office does not clearly show compliance with law and bad faith does not appear.

2-789;

3-107, 454; 6-122, 549

558. New, can not be made by one who has made entry without prerequisite compliance with law.

11-290

559. After, and hearing had thereon further time to comply with the law not allowed. 4-322

560. That the family of the preemptor does not live upon the land does not necessarily impeach his good faith. 3-213

561. Submission of, a few days prior to the expiration of the six months' requisite residence does not in itself call for cancellation if good faith is otherwise apparent. 10-260

562. The submission of, a few days prior to the expiration of the requisite six months' residence does not, in the absence of protest, call for new proof where the land is held by a subsequent purchaser without notice. 8-638

563. For lands within former indemnity withdrawal may be accepted, though offered within less than six months after revocation of the withdrawal, where the claimant has improved and resided upon the land prior to such revocation. 10-454

564. Submission of, within the shortest period possible not in itself sufficient to impeach the good faith of the preemptor. 10-119

565. The degree and condition in life of the entryman may be considered in determining whether he has shown good faith. 8-645; 17-200

566. Inferior character of improvements not evidence of bad faith if commensurate with claimant's means. 8-353, 639

567. That the improvements are inconsiderable in value does not warrant rejection of, if otherwise satisfactory. 9-1; 10-340, 468; 11-172

568. That shows breaking and use of the land for grazing purposes is sufficient as to cultivation where the land is suitable only for pasturage. 11-585

569. Proof of grazing accepted in lieu of cultivation on proper showing. 4-502; 7-455

570. Where proof of grazing is tendered in lieu of cultivation the extent of such use should be shown. 7-455

571. If land is fit only for grazing, that fact should be shown in explanation of such use of the land in lieu of cultivation. 7-294

572. Should not be rejected for failure to show cultivation if the inhabitancy and improvements are sufficient. 10-337

573. In the matter of cultivation the time of year in which residence was established may be considered where no crop was raised. 7-451

574. Breaking accepted as proof of cultivation where in other respects due compliance with law is shown and the failure to raise a crop is explained. 9-432

575. Proof as to cultivation does not necessarily require a showing that a crop has been raised. 7-439

576. Submitted by an entrywoman, and on which entry was allowed, may be held sufficient in the matter of her qualification as the "head of a family" where her response to the only question on such point, in the final-proof blank furnished by the Government, is full and without ambiguity. 21-345

577. And payment for part of the land covered by a filing is an abandonment of the remainder. 1-485; 7-206, 261; 16-251

XV. Timber Culture.

578. General circulars. 1-638; 5-234; 6-280

579. Publication of notice not insisted upon where the original entry was made prior to September 15, 1887. (Circular of Dec. 3, 1889.) 9-672; 10-501

580. Circular of March 25, 1896, under the act of March 4, 1896, amending the timber-culture law in the matter of. 22-350

581. Under the act of March 4, 1896, the personal evidence of the entryman, on the submission of, may be taken before a United States court commissioner, or a clerk of any court of record, anywhere in the United States, and the provisions of said act are applicable where final action has not been taken on the proof. 22-526

582. The act of March 4, 1896, does not modify prior legislation or regulations thereunder with respect to the testimony of the witnesses. 24-443

583. In the submission of, the personal testimony of the entryman should be taken before some officer authorized to administer oaths in the district in which the land is situated. 22-74

584. The requirement that a timber-culture entryman on the submission of, shall show compliance with the law by the testi-

mony of two witnesses, is statutory, and can not be waived; nor is the entry susceptible of equitable confirmation in the absence of such testimony. 27-476

585. A timber-culture entry may be equitably confirmed where the entryman fails to submit, within the statutory period and the delay is satisfactorily explained. 22-59

586. Commutation under the act of March 3, 1891, should not be made without due publication of notice. 16-482; 19-61

587. Should be adjudicated under the regulations in force when submitted. 9-189

588. Entry made under act of 1874 may be proved up under act of 1878. 1-123

589. Proof under any of the acts must be specific. 5-233

590. The statutory period within which it must be submitted can not be extended. 13-339

591. The act of May 20, 1876, permits an extension of time where the trees are destroyed by grasshoppers or inevitable accident. 21-315

592. Submitted after the expiration of the statutory life of the entry, either under the act of 1878 or the commutation clause of section 1, act of March 3, 1891, will receive due consideration. 13-339

593. An application to make homestead entry of land covered by a subsisting, under which final proof has not been made within the statutory period, does not confer upon the applicant the status of an adverse claimant entitled to be heard as against subsequent equitable action on the timber-culture entry. 22-208

594. Failure to submit, within the statutory period, no bar to equitable confirmation, if the delay is satisfactorily explained; and such right is not defeated by an intervening contest based only on the default of the entryman in the matter of making final proof. 25-501

595. A contest on the ground of failure to submit, within the statutory period, will not defeat the right to have said proof equitably considered, where it is submitted prior to notice of such contest and without knowledge thereof. 29-174

596. Final certificate issued on timber-culture proof prematurely made should

not be canceled, but suspended pending further compliance with law. 7-231

597. The period of cultivation should be computed under the rule in force at the time the entry was made. 9-86

598. The time consumed in preparing the land and planting the trees is computed as part of the required eight years of cultivation and protection. 2-309

599. At the expiration of the eight years from date of entry one-half of the trees (3,875) must have been growing for five years and the remaining half for four years. (See 6-624.) 2-310, 328; 3-260, 329

600. Premature if submitted prior to eight years' cultivation. 7-231

601. No authority for the submission of, prior to the expiration of eight years from date of entry. 13-698; 14-38

602. No authority to issue final certificate until after the expiration of eight years from date of original entry, even though the proof may show cultivation for the requisite period. 13-698

603. Under entries made prior to the circular of June 27, 1887, the time allowed for the preparation of the land and planting the trees may be treated as forming part of the requisite eight years of cultivation. 9-86, 284, 624; 10-409, 501

604. Under entries made since the circular of June 27, 1887, the period of cultivation must be computed from the time when the full acreage is planted. 9-86, 284

605. Showing the period of cultivation required by existing regulations and accepted by the local office should not be rejected under later regulations that call for a longer period of cultivation. 9-189

606. Departmental instructions of July 16, 1889, with respect to the rule to be observed in computing the period of cultivation, did not affect cases already adjudicated. 10-93

607. A timber-culture entryman who submits, within the statutory life of his entry is entitled to credit for each year of actual cultivation, if eight years of cultivation are shown. 29-214

608. It is the duty of the Land Department to see that the trees are of such size as to render their continued growth with-

out further cultivation or protection reasonably certain. 2-310

609. Rejected where it showed the trees averaged but $2\frac{1}{2}$ inches in diameter and 10 feet in height. 3-299

610. No standard as to size of trees at time of proof to be adopted. 3-329; 8-191

611. When the trees are not of a satisfactory growth at the end of eight years, without fault of the entryman, the law allows him five years' additional time. 2-309, 328

612. Submitted since the act of March 3, 1891, must show, as under the act of 1878, 675 living and thrifty trees to each acre. 14-434

613. Submitted by an entryman who complies with the law for the requisite period and at the end of such period replants the entire tract may be accepted under the fourth proviso of section 1, act of March 3, 1891, as amended by the act of March 3, 1893. 16-293

614. An application to submit, under section 1, act of March 3, 1891, can not be allowed in the presence of a pending contest in which there has been no hearing. 21-3

615. Under the act of March 3, 1893, may be accepted without regard to the age and size of the trees on the land if it be shown that the entryman has in good faith planted and cultivated trees thereon for eight years. 16-385

616. May be submitted by an executor under a will. 15-162

617. Administrator of the estate of deceased entryman may submit, for the benefit of the heirs. 16-149

618. Devisee of deceased entryman may submit. 16-151

FLORIDA.

See MINERAL LAND, 6, 40; PRIVATE CLAIM, VIII; RESERVATION, 151-155, 210; SCHOOL LAND, 227, 251; STATES AND TERRITORIES, 90-91; SWAMP LAND, 28, 244, 251-253.

FOREST FIRES.

1. Circular of February 2, 1895. 20-98

2. Public notice concerning, July 28, 1897, under the act of February 24, 1897. 25-73

FOREST RESERVATION.

See RESERVATION, IV; TIMBER LAND.

FRAUD.

See CONTEST, 102-107.

1. Must be clearly established to warrant the cancellation of an entry. 1-439; 6-225; 15-445, 451

2. A charge of, against an entry can not be established by evidence showing the fraudulent acts of a third party in relation thereto, if the connection of the entryman therewith is not proved. 18-467

3. Actual fraud shown on trial, though not charged, will justify cancellation. 3-462

4. Charge of, will not be disregarded. 3-57; 5-180

5. In the investigation of a case where fraud is alleged against an entryman, proof of other acts of a similar nature, done contemporaneously, or about the same time, is admissible to show such intent. 19-258

6. For which judgment will be set aside must be extrinsic to the matter at issue. 4-563

7. A claimant can not do indirectly that which the law directly forbids. 3-57

8. Charge of, does not change the established rules of evidence. 4-64

9. The Government will not knowingly further a fraudulent design. 4-158, 308

10. In the procurement of an entry, as against the heirs of a deceased adverse claimant, makes the cancellation of such entry necessary. 13-594

11. Presumption of, not justified by sale made shortly after entry. 4-135

12. Effect of, in the procurement of final adjudication renders the judgment void upon discovery before the proper tribunal. 5-31

13. Whilst it is competent for the Land Department to take cognizance of fraud whenever it appears to affect the title of public land, it is not its province to inquire into it when it merely affects the private rights of the parties. 2-616, 621

GAS LANDS.

See COAL LANDS, 176; MINING CLAIM, 602-604; RIGHT OF WAY, 144.

GEOLOGICAL SURVEY.

1. A report by the Director of the Geological Survey, based upon an examination by a field agent, concerning an application for reservoir site, may serve as a basis for a charge and order against the applicant to show cause why his application should not be rejected, but is not evidence upon which final action adverse to applicant may be taken without notice to him and opportunity to be heard. 40-484

GLACIERS.

See RAILROAD GRANT, 605.

GRADUATION ENTRY.

See ENTRY, 227; PRIVATE ENTRY, 156.

1. Invalid on account of failure of the local office to collect the full price of the lands covered thereby, confirmed, if otherwise regular, by act of January 18, 1898. 26-187

2. The pendency of an application to enter lands in a suspended, at the date of the confirmatory act of January 30, 1897, constitutes no bar to the operation of the act. 29-352

GRAVEL.

See HOMESTEAD, 155; MINERAL LAND, 48; RIGHT OF WAY, 38-39; WORDS AND PHRASES CONSTRUED, 20.

GUANO.

See MINERAL LAND, 42.

GUARDIAN.

See FINAL PROOF, 477-479.

1. Validity of appointment and acts thereunder can not be assailed collaterally in proceedings before the Department. 16-177

GYPSUM.

See MINERAL LAND, 35, 41, 57.

HAWAII.

1. The government lands of, ceded to the United States, are by the terms of the joint resolution of July 7, 1898, a part of the territory thereof, and though not subject to disposition under existing laws, are public lands of the United States. 29-32

2. The public land laws of the United States have no application in the Territory of Hawaii, nor has the Secretary of the Interior any appellate jurisdiction to review the action of the territorial officers with respect to public lands in that Territory. 37-18

3. The President of the United States may, under the joint resolution of July 7, 1898, reserve for military purposes public lands in. 29-32

4. In an exchange of public lands under the Hawaiian laws for lands of private ownership, the title should be taken to the Territory if the land is for uses of local government, but if for other than local public uses the conveyance should be to the United States. 31-238

5. The proviso in section 55 of the act of April 30, 1900, limiting the real estate which any corporation operating in Hawaii may acquire and hold therein to 1,000 acres precludes an exchange of lands owned by any such corporation for a quantity of public lands in said Territory aggregating more than 1,000 acres. 31-249

6. Section 73 of the act of April 30, 1900, relative to the leasing of agricultural land in does not apply to "homestead leases" or "right of purchase leases" for which provision had theretofore been made in the Hawaiian laws. 30-195

7. The provisions relating to the preparation, execution, and issuance of patents for lands, found in sections 171, 172, and 200 of the laws of (1897), are not specifically repealed by the act of April 30, 1900, and, as modified by said act, said sections must remain in force until Congress shall otherwise provide. 30-295

8. The authority conferred by section 169 of the civil laws of Hawaii upon the Territorial officers to lease, sell, or otherwise dispose of the public lands includes authority to grant an easement upon, over, and across them for the purpose of

constructing, maintaining, and operating all works necessary to supply water for irrigating lands, developing power, and for domestic purposes; and by sections 186 and 193 of said laws said officers are authorized to grant a right to use earth, rock, and timber upon adjacent public lands for the purpose of constructing, maintaining, and repairing such improvements. The power to make such grants for the purposes named being conferred upon the officers of the Territory by the local laws, which Congress by express direction has continued in force, and in no way depending upon the action of the Department of the Interior, it is not necessary that an application for the exercise thereof should be approved by the Secretary.

31-281

HEARING.

See PRACTICE, VII.

HOMESTEAD.

See ALIENATION, IV; APPLICATION; ENTRY; FINAL PROOF, XII; MINERAL LAND; OKLAHOMA LANDS; RESIDENCE; SETTLEMENT; WORDS AND PHRASES CONSTRUED, 22-25.

- I. Generally.
- II. By whom.
- III. Widow; Heirs; Devisee.
- IV. Deserted Wife.
- V. Indian.
- VI. Second.
- VII. Additional.
- VIII. Adjoining Farm.
- IX. Soldiers'.
- X. Soldiers' Additional.
- XI. Commutation.
- XII. Cultivation.
- XIII. Act of May 14, 1880.
- XIV. Act of June 15, 1880.
- XV. Act of March 2, 1889.
- XVI. Acts of April 28, 1904.
- XVII. Enlarged.

I. Generally.

- 1. Circular suggestions to homesteaders. 35-187; 36-373; 37-638; 39-232; 40-39
- 2. The last clause of the first paragraph of section 52 of the circular of September 24, 1910, abolished. 40-143

3. Circular of June 5, 1900, under act of May 17, 1900, with respect to free homesteads. 30-50

4. Circular of October 25, 1902, under act of June 17, 1902, relative to entries on lands temporarily withdrawn for irrigation purposes. 31-423

5. Circular of April 7, 1903, under act of March 3, 1903, granting relief to certain settlers in Alabama. 32-89

6. Circular of September 7, 1906, relative to homestead entries within forest reserves. 35-200

7. Circular of March 12, 1908, relative to surveys of lands taken as homesteads within forest reserves. 36-305

8. Regulations of July 23, 1907, concerning homestead entries within forest reserves. 36-30

9. Land unadapted to any agricultural use is not subject to entry under the homestead law. 38-265

10. Land which is so mountainous, rough, broken, heavily timbered, and of such poor quality that it is impossible of cultivation, is not subject to homestead entry. 40-342

11. The object of the homestead laws is the donation of public lands to persons seeking to establish and maintain agricultural homes thereon, conditioned upon actual occupancy of the same as a home, and cultivation and improvement of the land; and mere occasional visits to the claim do not meet the requirements of the law.

40-206

12. The initial homestead entry is merely a declaration of intention to acquire title to the land by performing the conditions required by the homestead laws, and protects the entryman as against the intrusion of other settlers, but as against the Government his right is only conditional and inchoate; and until proof that he has fulfilled the conditions required by the homestead laws, and is entitled to patent, has been submitted, and final certificate issued, no right vests in claimant as against the Government; and prior to the vesting of such right the rule that a forfeiture of title should not be declared except upon clear, positive, and convincing proof, has no application. 40-206

13. Validity is determined by the facts existing at the date it is made. 11-314

14. Statutory life does not run during suspension of the official plat of survey. 21-169

15. Voidable for illegality in preliminary affidavit. 5-118, 248

16. Execution of preliminary affidavit before clerk of court without prior residence renders the entry voidable, not void, and the defect may be cured in the absence of an adverse claim. 6-425, 722; 9-20

17. Confers no right in the presence of a valid intervening claim where the preliminary affidavit was executed before a clerk of court without the requisite residence on the land. 7-245

18. Voidable where the preliminary affidavit was made before a clerk of court without the prerequisite residence; but such defect may be cured prior to contest. 8-1

19. Based upon preliminary affidavit executed before a clerk of court without the prerequisite residence is voidable, and the defect can not be cured if, before residence is acquired, the right of a contestant intervenes. 9-209; 13-686; 15-337

20. Failure to establish the prerequisite residence where the preliminary affidavit is executed before a clerk of court may be cured by the establishment of residence prior to the intervention of an adverse right, and a subsequent contest does not cut off the right of amendment. 10-61

21. Based on preliminary affidavit made before a clerk of court not authorized to act in such matters is voidable only, and the defect may be cured by supplemental affidavit. 5-394; 6-257

22. Right of entryman to file amended affidavit of qualification not defeated by a pending contest under which the contestant can secure no preference. 19-282

23. The affidavit required in section 2294, R. S., may be made in the county to which the one is attached wherein the land is situated. 6-257

24. Under section 2291 not allowed on proof submitted in commutation of the original entry. 8-86

25. Made under section 2293, R. S., without the required settlement and improvement, ratified by the subsequent enactment of section 2308, R. S.. 1-362

26. Entries under section 2289, R. S., must be in conformity to legal subdivisions; and where a 40-acre subdivision has been rendered fractional, the remaining area may be appropriated only as an entirety. 39-17

27. Where at the time of making entry the entryman was prevented from taking the technical quarter-section desired because of an existing entry covering part thereof, but made entry of the remainder of such quarter-section together with sufficient adjoining land to make up 160 acres, he may, upon removal of the obstructing entry, be permitted to adjust his entry to the technical quarter-section in accordance with his original desire, provided his application to so amend is filed within one year from the date of his original entry. 40-434

28. Alleged to be in conflict with a mining claim may be disposed of without regard to such allegation, where, after due opportunity given, the mineral claimant fails to show the extent of said conflict. 19-287

29. Of an alien relates back to settlement on subsequent naturalization in the absence of any intervening right. 14-568

30. By alien who subsequently declares his intention of becoming a citizen not void. 4-564

31. May be equitably confirmed where through ignorance the entryman submits final proof prior to becoming a citizen. 10-475

32. Made by an alien can not be confirmed under rule 32 of the rules of equitable adjudication, for the benefit of the heirs, where the entryman dies without having declared his intention to become a citizen. 17-506

33. Embracing noncontiguous tracts, may be referred to the board of equitable adjudication where the noncontiguity is caused by cancellation of a part of the entry on account of a prior adverse right; and the original entry is made in ignorance of such adverse claim. 29-721

34. The relinquishment of part of a homestead entry, which would render the remaining tracts noncontiguous, should not be accepted; where, however, such a relinquishment was accepted, and the entryman upon faith of such action complies

with the law and submits proof with respect to the remaining noncontiguous tracts, the entry may be submitted to the board of equitable adjudication with a view to confirmation. 38-412

35. Rights not acquired by purchase of the improvements of a homesteader as against the prior adverse settlement of another. 4-121

36. Of land not subject thereto not legalized by subsequent residence, cultivation, and improvements. 10-649

37. Allowed to two claimants, to correspond with their settlement rights, in place of a canceled illegal entry made by one for the joint benefit of each. 4-529

38. Made while the entryman has a pending preëemption claim is not void, but *prima facie* valid, and only becomes voidable by the subsequent maintenance of the preëemption claim. 7-215

39. Made while the entryman has a pending preëemption claim of record for another tract is not necessarily void, for said claim may have been in fact abandoned. 9-63

40. Of land covered by the prior timber-culture entry of another not of record, without actual notice of any claim thereunder, is a valid claim, that will attach on relinquishment of the prior entry and exclude the right of a contestant against said entry. 11-356

41. A homestead entry by one who purchased the improvements and relinquishment of a prior entryman will not be canceled to reinstate the former entry, in the absence of fraud or bad faith, merely because the relinquishment of the former entry was filed after the entryman's death. 38-475

42. By one who went upon the land as tenant of another may be allowed where there is no fraud and the latter has made no claim to the land. 2-135

43. Failure to establish residence until after action upon the adverse report of a special agent does not in itself warrant cancellation. 7-464

44. Admitted against the claim of a railway company where final proof was to follow at once, the company to have special notice thereof. 4-256

45. Allowed in contravention of the terms of the act of March 3, 1883, may be suspended until after public offering of the land. 7-560; 9-203, 635

46. In changing an entry pending a contest for default one will not be permitted to assert a homestead right initiated while the tract was covered by his timber-culture entry. 2-265

47. Allowed as a homestead for land formerly claimed under the preëemption law, notwithstanding certain alleged intervening adverse rights. 3-313

48. By a contestant of a timber-culture claim is confined to land in contest unless less than 160 acres, when contiguous land may be taken; by contestant of a homestead claim may be made on a portion of the land in contest and adjoining land. 2-289

49. In conflict with previously acquired rights is voidable. 1-449

50. If made for any other purpose than the establishment of a home, is in bad faith. 8-248

51. A homestead entry in another's interest, and not for a home for the entryman, is in fraud of the law and invalid *ab initio*. 2-95

52. An applicant is bound to personally know the character of the land, whether it is suitable for purposes of residence and cultivation, and any mistakes therein that may be avoided by proper diligence are at his own risk. 13-236

53. Of a less amount than that covered by settlement operates as an abandonment of the land not entered. 11-557

54. May remain of record subject to the right of a preëemptor where such preëemptor, as against the homesteader, is accorded the right to file for the land. 13-593

55. Made in the presence of a prior adverse settlement must be canceled on due showing of the settler's claim. 21-542; 26-301

56. Rights lawfully acquired by homestead, under proceedings in the land office authorized by existing law, may properly be perfected, though the law authorizing such entry is subsequently repealed. 26-330

57. An entry based on settlement made in reliance on the holding that land ac-

quired under the timber and stone act was not contemplated by the act of August 30, 1890, limiting the amount of land that might be acquired by one person under the agricultural land laws to 320 acres, may be permitted to stand notwithstanding the Land Department had, subsequent to the settlement but prior to entry, changed its interpretation, and at the date of the entry was holding that the limitation fixed by the act included land acquired under the timber and stone act.

36-423

58. The amendment of section 2289, R. S., by the act of March 3, 1891, disqualifies applicants who own more than 160 acres of land, irrespective of the law under which title to such land is acquired.

13-437; 15-158

59. The words "subject to preëmption" used in section 2289, prior to its amendment by section 5, act of March 3, 1891, to define in part lands subject to entry, are omitted from the section as amended; and since said amendment the only limitation upon the character of lands subject to entry by said section is that they shall be "unappropriated public lands."

28-61

60. The provision in section 2289, as amended by section 5, act of March 3, 1891, that no person who is the proprietor of more than 160 acres shall acquire any right under the homestead law, is no bar to the allowance of an entry based upon an application made prior to said amendatory act, and strictly in compliance with the laws and regulations then in force.

24-343

61. The disqualification resulting from the ownership of other lands is general, with no exception as to the ownership of arid lands, and operative without respect to the manner in which title to the land is obtained.

26-61

62. A homesteader will not be held disqualified by the ownership of more than 160 acres, where the alleged excess was held under a preëmption entry that has been subsequently canceled.

25-348

63. One who holds land under an unperfected desert-land entry is not the proprietor thereof within the meaning of the statute holding disqualified to make home-

stead entry one who is the proprietor of more than 160 acres.

38-153

64. A transfer of land by one owning more than 160 acres, for the purpose of qualifying himself to make entry, is not a violation of law, provided the transfer is final and in good faith.

38-153

65. It is not a violation of the acts of May 2, 1890, or March 3, 1891, for the owner of 160 acres or more, to dispose of such part of said land as will enable him to make the oath required of homestead applicants, provided the sale is final and in good faith.

27-546

66. One owning 160 acres in his own right, and also holding the title to other land in trust for another without any beneficial interest in himself, is not for that reason disqualified.

31-166

67. One holding the naked legal title to land in which he has no beneficial interest but holds as mere dry trustee for another who paid the consideration therefor is not the proprietor thereof within the meaning of section 2289, R. S.

38-201

68. The disqualification imposed upon a person owning more than 160 acres extends to one who holds land under a contract of purchase, though the payments thereunder have not been completed.

32-226

69. The disqualification imposed on one who is the proprietor of more than 160 acres, does not extend to one who at the time of making entry holds lands under a contract of purchase, where at the time the contract was entered into and at the date the entry was allowed the contractor was not the owner of, had no interest in, or power over the title to the lands he assumed to sell; and the fact that he subsequently becomes the owner thereof can in no wise affect the qualifications of the entryman at the date the entry was made.

36-82

70. The disqualification arising from the ownership of land is determined by the statutory provisions existing at the date of the entry, and not at final proof.

27-647

71. Where at the time of making entry the entryman was disqualified by reason of being the proprietor of more than 160 acres, but acted in good faith, believing himself qualified, and prior to the inter-

vention of any adverse right or proceeding against the entry the disqualification is removed, the entry may be permitted to stand and considered effective from the date he became qualified. 39-418

72. Under the maxim *de minimis non curat lex*, the ownership of less than 1 acre in excess of 160 acres will not be held a disqualification to make homestead entry. (See 40-259.) 39-131

73. Section 2289 specifically declares the proprietor of more than 160 acres disqualified to make homestead entry; and the Land Department is without power to hold so qualified one who owns more than 160 acres, notwithstanding the excess may be less than 1 acre. 40-259

74. One in possession of a quarter section under a timber-culture entry is not the "proprietor" of said tract and disqualified thereby as a homestead applicant; nor is the ownership of stock, issued by a corporation whose capital is invested in lands, a disqualification. 19-96

75. A fraudulent deed, purporting to convey a tract from the homesteader to his son, will not relieve the entryman from the disqualification imposed upon persons that own more than 160 acres of land. Such disqualification also extends to one who holds lands under a contract of purchase, though the payments thereunder have not been completed. 18-397

76. The disqualification imposed on one who is the "proprietor of more than 160 acres of land," extends to one who holds under a contract of purchase lands selected by the State, even though the title may yet be in the Government and the payments under the contract have not been completed. 35-615

77. One who enters into an oral agreement to purchase land, and makes part payment of the purchase price, is not the proprietor of the land within the meaning of the homestead law, where, under the laws of the State, such oral agreement and part payment do not constitute such part performance as will take the contract out of the Statute of Frauds. 38-613

78. A transfer of land by an intending homesteader with a view to removing the disqualification resulting from the ownership of more than 160 acres will not be held effective for that purpose unless

actual and in good faith and evidenced by such facts as show that it is not a mere collusive device to evade the law. 37-176

79. An absolute conveyance, although made to defraud creditors, is, as between the parties, a valid conveyance of the title, and not merely a conveyance in trust; and one vested with title under such conveyance, to more than 160 acres, is disqualified to make homestead entry. 40-209

80. In estimating the acreage of an undivided fractional interest in real estate for the purpose of determining a homestead applicant's proprietorship within the meaning of section 2289, R. S., as amended by section 5, act of March 3, 1891, he shall be charged with that portion of the total acreage of the land owned by him in common with others which is represented by the fractional extent of his undivided interest. 37-110

81. In determining whether a homesteader is disqualified by the ownership of land, the grant of a railroad right of way across the same can not be regarded as diminishing the acreage held in fee by the homesteader. 21-114

82. One holding the fee subject to an easement for public road is not the proprietor of the area covered by the easement within the meaning of section 2289, R. S., and such area should be excluded in determining his qualifications to make entry under that section. 39-189

83. (See also title OKLAHOMA LANDS, 113-121, for decisions with respect to ownership of land as affecting entryman's qualifications.)

84. Entry may embrace 160 acres in odd-numbered section within railroad grant if excepted therefrom. 14-71

85. The act of May 17, 1900, operated to abrogate the general rule that requires payment for the excess area in homestead entries containing more than 160 acres, in so far as such rule, prior to the passage of said act, affected the entry of lands designated therein. 31-162

86. The affidavit required to be made by homestead applicants amended so as to state that since August 30, 1890, the applicant has not acquired title to, and is not now claiming under any of the agricultural public land laws, an amount of land which, together with the land ap-

plied for, will exceed in the aggregate 320 acres. 32-400

87. An entryman who by reason of misinformation, and with no intent to waive any part of his right, enters less than 160 acres, will be permitted, where his entry has not yet been carried to completion and no adverse rights have intervened, to amend his entry so as to include a quantity of adjacent unoccupied public land, subject to such entry, which added to the land already entered will not exceed 160 acres. 32-176

88. The term "one quarter section" in section 2289, fixing the maximum area that may be taken as a homestead under that section, contemplates 160 acres, and an entry under that section must be limited to approximately that number of acres. 37-330

89. Applications under that section embracing in excess of 160 acres may be allowed where the excess is less than the deficiency would be if the smallest legal subdivision were eliminated. 37-330

90. The right exhausted with one entry. 2-141; 3-57; 5-124, 133

91. Section 2289 contemplates but one entry under its provisions, and there is no authority for the exercise of this right piecemeal. 36-96

92. A homestead settler who makes entry of a part of the land embraced in his settlement claim thereby abandons said claim as to the remainder. 27-134

93. Under the original act rights were initiated solely by entry. 1-31; 3-131; 6-134

94. Under the law it is entry which reserves the land. 3-131

95. The qualifications requisite to make entry must exist at the date of entry, and any rights acquired by the filing of an application are lost where the applicant subsequently and prior to entry becomes disqualified to enter. 30-9

96. The qualifications requisite on the part of a homesteader must exist at the date of entry, and if after settlement and prior to entry the settler for any reason becomes disqualified, the privilege gained by settlement is lost. 30-8

97. Right to make entry does not extend to lands reserved by competent authority. 10 513

98. An act of a Territorial legislature establishing the limits of a city, so as to include lands embraced within an Indian reservation, is inoperative as to the lands so reserved, and on the removal of the reservation no bar to the allowance of an entry. 24-526

99. Illegal possession of land will not defeat the right of another to enter the same under the homestead law. 16 202; 28-250

100. Can not be made of land occupied in good faith by others. 3-362

101. Land in the actual possession and occupancy of one holding under claim and color of title is not subject to entry. 28-235; 29-610

102. Entry made with intent to use the land, or a part thereof, for townsite purposes renders the entry invalid in its entirety. 12 654; 14-452

103. Entry of land occupied by the entryman at time of entry for purposes of "trade and business" is illegal, and the illegality extends not only to the land covered by the buildings and improvements, but to the entire entry. 6-332; 10-649

104. The law does not contemplate that the right of entry shall be exercised by one who makes settlement primarily and chiefly for trade and business, and not for agricultural purposes. 24-24

105. Land claimed and selected as a townsite and with improvements thereon for the purpose of trade and business is not subject to homestead entry. 13-143, 399, 404, 562

106. The amendment of sections 2289 and 2290, R. S., by the act of March 3, 1891, does not authorize homestead entry of lands within the limits of an incorporated town. (See 28-62.) 23-462

107. Lands actually appropriated to urban uses are not subject to homestead entry. 35-161

108. Land in the actual occupancy of townsite settlers is not open to settlement and entry under the homestead law. 26-393, 444

109. No State law incorporating a town can appropriate public lands and withdraw them from disposition under the homestead or other laws of the United States. 28-61

110. The act of March 3, 1877, reserves from preemption and homestead entry public lands within the limits of an incorporated town to the extent of the maximum quantity susceptible of entry by such town under the townsite laws. 28-62

111. Where the limits of an incorporated town embrace less than 2,560 acres, the maximum quantity susceptible of entry under the townsite laws, a part of which has been entered as a townsite and the remainder of which is vacant and unoccupied land contiguous to that theretofore entered, all of such public land is reserved from preemption and homestead entry. 28-62

112. An entry improperly allowed of land reserved for townsite purposes by the act of March 3, 1877, may be permitted to stand, where subsequently the town is disincorporated, and no adverse claim exists. 28-62

113. If at the date of the original entry the land is not occupied for purposes of "trade and business," the subsequent use of the land by others for such purposes will not defeat the right of the claimant. 10-205

114. For lands settled upon originally by the claimant and others as a townsite and actually occupied for trade and business is illegal and must be canceled. 9-532

115. Not prevented by abandoned townsite settlement. 5-180

116. A townsite claim set up to defeat a, will not reserve the land from appropriation when not occupied for townsite purposes at the inception of the homestead right, nor at any time subsequent thereto. 20-367

117. The occupancy of a small portion of a subdivision as a Mexican village settlement, will not except the tract from entry, if the land so occupied is not used for purposes of trade and business, and no claim thereto is asserted under the townsite laws. 20-346

118. The agreement of a homesteader to protect Mexican village settlers in their occupancy does not render the entry speculative, nor bring it within the statute which provides that entry shall not be made for the benefit of another, where it

is apparent that said occupancy is not at the instance of the entryman. 20-346

119. The occupancy of land by transient miners does not reserve it from entry where such occupancy is not for the purpose of trade and business, and such occupants take no legal steps to assert their rights under the townsite laws. 21-228

120. Lands "in the possession, occupation, and use of Indian inhabitants" are not "unappropriated public lands" within the meaning of section 2289, R. S., and are therefore not subject to entry under said section. 30-125

121. An additional townsite claim set up to defeat a, can not be recognized where it appears that there is no necessity for additional townsite territory, that the tract is not embraced within the limits of the townsite, and there is no actual settlement on the land for townsite purposes. 21-234

122. The right of townsite settlers to make entries of the respective subdivisions on which they are residing and have improvements, attaches simultaneously on the abandonment of the townsite, where the settlements were made at the same time and for the same purpose. 21-104

123. Rights acquired by settlement not defeated by subsequent townsite settlement. 11-330

124. The conditions existing at date of final entry determine whether land should be excluded from entry on account of its alleged mineral character. 7-570; 15-37, 290, 514

125. After the purchase of land under a commuted entry, and the issuance of a final certificate therefor, a discovery of coal on such land will not defeat the issuance of patent. 21-92

126. Before final certificate issues an entry is open to attack on the ground of the mineral character of the land without regard to the date of mineral discovery. 15-514

127. The submission of final proof will not preclude a hearing as to the subsequent discovery of mineral on the land involved where final certificate is not issued and the General Land Office requires new final proof. 15-290

128. Right not vitiated by the fact that the land entered contains a stone quarry and that the entryman was aware of such fact at date of application if good faith is otherwise apparent. 11-140

129. Entry of land that has no value except for the stone it contains, and made with speculative intent, must be canceled for want of good faith. 15-276

130. To exclude land from entry on account of the limestone thereon, it must appear that the land is more valuable for the stone than for agriculture. 23-353

131. Land more valuable on account of the sandstone therein than for agriculture is mineral in character and a homestead entry thereof is unauthorized. 26-373

132. Entry of land more valuable for the stone it contains than for agriculture not of necessity made in bad faith, though made for the purpose of securing the stone, and may be perfected on due compliance with the homestead law. 16-537

133. The fact that land is more valuable for timber and stone than for agricultural purposes does not exclude it from appropriation under the homestead laws, if not mineral in character. 34-115; 35-561

134. The fact that land is covered with valuable timber does not exclude it from entry, where of such character that it would be suitable for agricultural use if the timber were removed; but land of a character not adaptable to any agricultural use is not subject to homestead entry. 38-394

135. Entry of land subsequently found to contain coal can not be completed. 14-426

136. An entry, made with knowledge that the land contains a valuable deposit of phosphates, is illegal, and must be canceled. 28-58

137. Claim for land chiefly valuable for timber should be carefully scrutinized. 8-526

138. An entry made for the purpose of securing the timber, and not for the purpose of obtaining a home, must be canceled. 26-151

139. The fact that a homesteader uses a portion of the land in connection with his sawmilling business in no wise affects

the validity of his claim if he in good faith complies with the law. 35-519

140. Rights acquired through transmutation relate back to settlement and filing. 9-32

141. Entryman may bring action for trespass prior to final proof. 3-54

142. Terms of the law must be complied with though the entry may be of land requiring irrigation. 5-297

143. Entry having been allowed should not be canceled on *ex parte* allegation of prior adverse settlement right, but a hearing should be ordered to settle priorities. 5-526; 6-766; 8-528; 15-379

144. Not allowed where the evident purpose was to wrongfully secure the land and improvements of another. 4-158; 5-377; 22-266

145. Right of a person living on land under the mistaken belief that his title is complete, to enter said tract, on relinquishment of a record entry thereof, is superior to and will defeat an intervening adverse entry made with knowledge of the settler's claim. 25-135

146. To justify the allowance of an entry for land made valuable by the money and labor of a prior adverse settler, who is in default in the matter of filing application, it should clearly appear that the subsequent claimant is acting in good faith. 25-475

147. Want of good faith on the part of the applicant defeats the right of. 13-562; 22-465

148. Good faith of an entry not impeached by the fact that an acre of the quarter section has been reserved for the location of a land office. 14-13

149. Claim of one who fails in residence will not defeat a preemptor who has not filed. 5-188

150. Total failure to comply with the law not excused by poverty. 4-185

151. Not allowed where settlement could only be effected by forcible intrusion. 5-377

152. The "family" of the entryman includes his children, legitimate or otherwise, that remain with him and under his care. 9-52

153. May cut and dispose of timber for the permanent improvement of claim. 24-454

154. Entry does not authorize general disposition of timber. 4-289; 5-389

155. Entryman does not have the right to remove sand and gravel from unperfected entry for the purpose of sale; but trespass in that respect does not necessarily invalidate the entry. 40-467

156. Not maintained through the occupancy of a tenant. 3-362

157. Right not lost by failure to contest a *prima facie* valid adverse claim. 7-385

158. The right of a homesteader to perfect his entry is not defeated by the prior occupancy of a portion of the land by one not asserting any claim thereto under the settlement laws. 22-65

159. Section 2287, R. S., authorizes the perfection of a pending claim through payment for the land, and not through a constructive residence thereon. 11-18

160. The right of a homesteader, who after settlement and entry is appointed register, to perfect title "under the preemption laws," as provided in section 2287, R. S., is not defeated by the repeal of the preemption statutes. 27-444

161. The claim of one who settles upon and improves a tract returned as school land, but ultimately held to be excepted from the school grant, and first applies to purchase from the State and then seeks title under the homestead law, is not defeated by an intervening timber-culture entry. 15-293

162. Entry must be canceled on death of entryman without heirs. 3-384

163. If the evidence shows that entryman died without having earned the land, and that there are no beneficiaries entitled to succeed to his interest, the entry should be canceled. 22-446; 25-453

164. Where a homesteader dies prior to the completion of his entry there is no authority for the perfection thereof for the benefit of creditors. 25-453

165. A settler who has complied with the law, but has not submitted proof and acquired a vested estate, has nevertheless an inchoate right of property in the land, which upon his death becomes an asset of his estate, subject to completion and appropriation in the manner provided by section 2291, R. S., and where not appropriated or converted under said section, it remains a part of the settler's estate,

and as such is subject to distribution as other property. 33-227

166. Under the provision of the homestead law which confers upon the widow of a deceased entryman the right to complete the entry, the wife of an entryman sentenced to the penitentiary for life is entitled to perfect the entry in like manner as if the entryman were actually dead. 39-151

167. Claim secured through concessions made a conflicting settler. 5-119

168. The right to make entry of a tract within an unauthorized indemnity withdrawal is not defeated by a prior application of the entryman to purchase the land from the company. 21-402

169. Procedure in case of forest fires, under act of January 19, 1895; circular of February 2, 1895. 20-98

170. The words, "for the right of way of railroads," in section 2288, R. S., are not limited to the width of the track, but include such space as is necessary for side-track, stockyards, or other purposes incident to the proper business of a railroad. 28-561

171. Entries in Black Hills Forest Reserve; instructions of September 22, 1899, under the act of March 3, 1899. 29-190

172. The act of May 22, 1902, does not enlarge the scope of the act of March 2, 1889, so as to allow an additional entry under that act for a greater amount of land than therein specified, but gives a new and independent right to make a homestead entry, for not exceeding 160 acres, to such persons as would have been entitled to the benefit of the "free homestead act" had they not made final entry prior to the passage thereof. 32-135

173. The act of May 22, 1902, conferred a new and independent right of entry upon every person who, prior to the act of May 17, 1900, had perfected a homestead and acquired title by payment of the price provided in the law opening the land; and this right is in nowise affected by the fact that the perfected entry was for less than 160 acres and that an additional entry was subsequently made, under section 6, act of March 2, 1889, and not carried to completion until after the passage of said act of May 22, 1902. 32-505

174. The fact that an entryman pays cash for a portion of his entry as excess land does not constitute such excess a separate entry which may be regarded as having been entered under the private cash system. 33-274

175. Where a claimant, by contract to convey the land after the submission of final proof, puts it beyond his power to acquire title except by perjury, he thereby forfeits his rights, and upon proof of such fact the entry will be canceled. 34-46

176. A contract to sell the relinquishment of a homestead entry is not in violation of the oath required of a homestead applicant by section 2290, as amended by the act of March 3, 1891, and is no ground for cancellation of the entry if good faith at the time of making entry is apparent. 32-139

177. Where prior to final proof a resurvey is made, the entry should be amended to conform to such resurvey, and the fact that the local officers accepted final proof and issued final certificate without such amendment will not prevent the department requiring the entry to be amended to conform to the lines as established by the resurvey at any time prior to patent. 35-12

II. By Whom.

See IV, V, HEREOF; ENTRY, XI.

178. Right to initiate a claim is conferred upon one "who has filed his declaration of intention" to become a citizen. 8-289

179. An entry made by one not a citizen, and who has not declared his intention of becoming one, is not void, but voidable, and his subsequent declaration of intention, made prior to the intervention of an adverse claim, cures the defect. 22-124

180. Applicants alien born must accompany affidavits with record proof that they have declared their intention to become citizens. 2-194

181. Circular of May 13, 1904, under act of April 23, 1904, relating to void declarations of intention to become citizens. 32-619

182. An alien honorably discharged from the United States Army possesses

the requisite qualifications in the matter of citizenship to initiate a claim. 16-352

183. As a Mongolian is not eligible to citizenship, a native of Japan can not, by filing a declaration of intention, or by virtue of an inoperative decree of a court purporting to confer citizenship upon him, acquire the right to make entry. 36-277

184. To constitute one the head of a family it is not necessary that he should be under a legal obligation to support the family; it is sufficient if, acting from a sense of moral duty, one undertakes the support and maintenance of a family to which he owes such moral duty. 30-306

185. Can not be made by a married woman. 2-112

186. Circular of June 27, 1900, under act of June 6, 1900, relating to entries by married women. 30-313

187. A married woman is not a qualified applicant for the right of homestead entry. 29-267, 297; 30-8

188. A charge that an entry woman was, by reason of marriage, disqualified to make entry, must fail where the alleged marriage was illegal and void *ab initio*. 28-52

189. A married woman can assert no right under the homestead law to a tract of land through a former husband who made no formal claim under said law. 18-304

190. Married woman, the head of a family, qualified to make. 10-527

191. A married woman, not the head of a family, is disqualified to make homestead entry. 29-381

192. A married woman, whose husband from disease and infirmity is permanently incapacitated to support the family, is qualified to make entry as the "head of a family." 19-85

193. A married woman who is not entitled to acquire a domicile of her own, separate and apart from that of her husband, is not qualified to exercise the homestead right. 25-129; 30-9

194. The entry of a single woman is not affected by her subsequent marriage. 5-196; 6-140; 7-470;

10-30; 13-548, 623; 20-185

195. Entry by single woman not impaired by subsequent marriage if she thereafter complies with the law; but

where the husband also has an entry the parties must elect which claim shall be perfected. 10-266; 11-207; 13-734; 15-377

196. A single woman who applies to make entry through an officer authorized to take the preliminary affidavit and marries prior to receipt of the application at the local office, is not qualified to enter. 13-601; 39-363

197. A single woman who has made entry forfeits her rights if she subsequently marries a man who is at such time also asserting a homestead claim on which he thereafter submits final proof. 21-430

198. The act of June 6, 1900, removed the disqualification resulting from marriage, but the right of a woman who had settled upon public land and thereafter married, to complete entry of such land under the homestead laws, is subject to all the requirements of those laws as to residence, and while said act was retroactive in the matter of removing the disqualification, it did not revive a claim initiated prior to its passage, by a single woman, and lost by reason of actual abandonment of the land. 30-525

199. Under the act of June 6, 1900, an unmarried woman who settles upon, improves and establishes and maintains residence upon a tract of public land, with the intention of obtaining title under the homestead law, and thereafter marries, is not by her marriage disqualified from making entry for said tract. 30-156

200. Mere acts of settlement, without residence, performed by a single woman who subsequently marries prior to allowance of entry upon her application for the land, do not bring her within the act of June 6, 1900, and she is not entitled to carry the entry to completion. 39-363

201. The rule that separate settlement claims can not be maintained by husband and wife at the same time on different tracts will not defeat equitable action on a homestead entry made by a single woman, who, prior to completion of her claim, marries a man having an unperfected homestead entry, if, at such time, the period of residence under his claim authorized the submission of final proof thereon. 22-528

202. If a man and woman make entry of adjacent tracts and thereafter marry,

and maintain residence in a house built across the line dividing their claims, the residence of the wife must be held to have been abandoned from the date of her marriage; but, if the husband subsequently dies, the widow, without forfeiting her right to perfect her husband's claim, may resume residence on her own land, in the absence of any intervening adverse right, and perfect title thereto. 26-194

203. The right to receive patent in case of entry by a single woman is not abridged by her marriage or removal from the land after fulfilling the statutory period of residence. 6-140

204. Validity of entry made by a divorced woman may turn on the good faith of the divorce proceedings. 14-570

205. A husband and wife, while living together in such relation, can not each maintain an entry at the same time. 18-116

206. Where a woman, having an unperfected entry, marries a man having a similar claim, the parties should elect which of the claims they will maintain, as both can not be carried to patent. 18-116

207. By one in his own right who has already made final proof as the minor orphan child of a deceased soldier. 2-100

208. By a widow in her own right while continuing to cultivate the homestead of her deceased husband. 2-169

209. The right of a widow to make entry recognized though holding land covered by the entry of her husband on which final proof has not been made. 5-184

210. Right to perfect an entry in case of the entryman's death can only be asserted by the actual successor in interest. 16-177

211. It appearing by official certificate that applicant has by judicial proceedings adopted a child, and so become the head of a family and qualified to make entry, the department will not question the validity of said proceedings. 20-233

212. One disqualified to make entry by reason of being a minor can not qualify himself, as the head of a family, by adopting a younger brother during the lifetime of the parents and with a view to evade the law. 36-133

213. By a minor as head of a family. 2-82; 30-306

214. Submission to a guardianship created on behalf of one who represents himself as a spendthrift and asks for a guardian of his estate does not operate to disqualify such person as a homesteader. 28-261

215. By the wife of an insane person as head of a family, her husband being civilly dead. 2-102

216. Entry of insane claimant may be proved up by person authorized to act for him during his disability. 24-495

217. No rights acquired by the purchase of another's improvements when not followed by settlement and residence. 6-608

218. Allowed to one who has already made preemption and entry. 4-441

219. Right of persons engaged in military service to make entry limited by the requirement of residence. (See 4-399.) 13-634

220. Section 2308, R. S., not intended to include persons serving in the Regular Army since the close of the rebellion. 14-472

221. One in military or naval service may take, on showing due compliance with the law. 1-98; 4-399; 14-475

222. Right of the entryman not affected by the fact that final certificate had not been issued on his prior preemption claim when he made his entry, it appearing that he was entitled to such certificate at that time. 7-455; 8-268; 11-182; 12-42; 14-32

223. Right can not be accorded to one at the same time maintaining a preemption claim for another tract. 3-226;

4-26, 462; 5-403; 6-831; 7-215, 225;

444, 447; 8-96, 200, 461; 9-63

224. Claim not initiated while holding as tenant. 4-259

225. Where husband and wife settled on and improved a tract, and afterwards the wife made entry of it under a mistake as to the law, said entry is canceled, with privilege to the husband, if qualified, to enter in his own name and to have his right relate back to date of settlement. 2-112

III. Widow; Heirs; Devisee.

226. Entryman can not by will defeat the statutory succession. (See 16-464.) 1-41, 86

227. A will, in so far as it attempts to pass any interest in a homestead entry before the completion of title by compliance with the homestead law, is inoperative as against those upon whom the law devolves the right to the entry; and no possession under such a will can be pleaded in excuse of failure to comply with the law by those upon whom the law devolves the right to the entry. 39-362

238. Right of widow, heirs, or devisee to make entry. (See 16-464.) 1-64, 86; 2-46, 77; 6-134

229. On the death of a homesteader the right to perfect his claim and receive title vests in the widow and not in the heirs. 18-421

230. On the death of a homesteader the widow takes the homestead right free from any claim on behalf of the heirs; and an agreement to divide the land with the heirs, made by her under mistake as to her rights, can not be held binding, in the absence of any action taken under said agreement by which she would be estopped from the repudiation thereof. 28-6

231. Upon the death of a homesteader prior to consummation of his claim his widow, if there be one, succeeds under the homestead law to his right to the land; and the State courts have no jurisdiction to interfere with or divert the succession so fixed by Federal statute. 38-490

232. Before the rights of heirs are considered it must be shown that there is neither widow nor child surviving. (See 16-464.) 2-98

233. Upon death the law casts the homestead right on the widow, who must, however, so indicate her intention of claiming the land that third persons shall not be prejudiced by her laches. 2-138

234. Where a homestead entryman dies leaving a widow and children surviving, and the widow renounces her right to complete the entry under section 2291, R. S., in favor of the heirs, the children are entitled to perfect the entry and take title to the land just as though the widow were dead. 40-625

235. In the event of the death of a homesteader leaving a widow and heirs, where proof is made on behalf of the heirs, and it appears the widow has aban-

doned her rights, patent issues to the heirs generally. 22-426

236. On the death of a homesteader who has earned title to the land the right to submit proof and obtain patent is in the widow and not the heirs. 27-572

237. In event the widow and immediate heirs of a deceased homestead settler, who has earned title to the land die, without having availed themselves of the right to perfect the settler's claim under section 2291, R. S., such right passes to the next of kin. 32-389

238. Upon the death of a homesteader the right goes to his widow, or in case of her death to his heirs or devisee, free from defect on account of any default on the part of the entryman in the matter of residence or otherwise, and the widow, heirs, or devisee, may complete the entry by either residing on the land or cultivating the same for the required period, but need not do both. 32-650

239. Upon the death of a homesteader who had up to that time complied with the law, his widow will not be required to cultivate the land where the period during which compliance with law is necessary has so nearly expired that no effective cultivation by planting and harvesting is possible within the time remaining. 35-512

240. Where the heirs of a deceased homesteader seek to perfect the entry, and have not themselves, after the death of the entryman, complied with law for the required period, the question as to whether the entryman during his lifetime complied with the law for such a period as, added to the period during which the heirs complied with the law, would amount in the aggregate to the required period, is a proper subject of inquiry, whether raised by protest or otherwise, at the time final proof is submitted by the heirs. 35-335

241. While the heirs take the entry free from default on the part of the entryman, it is incumbent upon them, in submitting proof, to show that the requirements of the statute have been fully met, either by the entryman or by them, or in part by the entryman and in part by them. 35-522

242. The heirs of a deceased homesteader who during his lifetime failed to comply with the law, may complete the en-

try by either residing upon *or* cultivating the land for the full period of five years, if sufficient of the lifetime of the entry remains for that purpose; or may commute upon a showing of residence *and* cultivation for 14 months, but can not commute upon a showing of cultivation alone. 37-519

243. The widow of a deceased homesteader who had complied with law up to the time of his death is entitled to commute her husband's entry upon showing both residence and cultivation, immediately succeeding his death, for a period which, added to the time of his compliance with law, will amount to 14 months' residence and cultivation, provided proof be seasonably made. 39-224

244. On the death of a homesteader, leaving a widow and heirs, the widow takes the homestead right free from any claim of the heirs, and may complete the entry for her own benefit, or relinquish the same if she so elects. 26-436

245. The temporary separation of an entryman and his wife will not defeat the right of the latter, as widow, to submit final proof on his entry. 28-53

246. A minor orphan daughter, surviving, succeeds to her father's entry, and may also make homestead entry in her own right. 2-100

247. On the death of an entryman leaving adult and minor heirs the title inures to the minors, to the exclusion of the adult heirs. (See 16-464.) 1-41, 86; 2-98; 10-543

248. In case of the death of an entryman leaving no widow, but both adult and minor heirs, patent should issue to all the heirs equally. 16-463; 22-403

249. Where a settler on unsurveyed land dies prior to survey, and an entry is made for the heirs, it should be made for the benefit of "the heirs or devisee" of the deceased settler. 20-533

250. Where a settler upon unsurveyed land dies prior to survey, after having resided upon and cultivated the land for five years and therefore become entitled, upon making entry and final proof, to a patent, and his widow, after his death, continues to assert the right, she is entitled, upon filing of the plat of survey, to

make entry and proof and complete title to the land. 39-279

251. Where a homesteader dies leaving a widow, who also dies before compliance with the law, the right to acquire patent passes to the heirs of the entryman, both adults and minors, equally. 17-212

252. The widow having submitted proof showing full compliance with the law secures thereby the equitable title to the land, and delay in the issuance of final certificate will not affect her rights. In the event of her subsequent death the equitable title descends to her heirs. 17-293

253. Married woman may, as heir of a deceased homesteader, file application, submit proof, and receive patent. 8-286

254. If the entryman dies before final proof, and his widow also dies, not having made proof, the right vests in the heir or devisee of the entryman, and not in the heir or devisee of the widow. 10-240; 13-131

255. The provision in section 2292, R. S., that in case of the death of both father and mother, leaving an infant child or children, the right and fee "shall inure to the benefit of such infant child or children," contemplates the immediate investiture of said "right and fee" on the death of the last surviving parent; and that such children are entitled to patent on showing compliance with law on the part of the entryman up to the time of his decease, the death of both parents, and the fact of minority. 20-109; 26-259; 27-596

256. On the death of a homesteader, who leaves minor children, and the death of the wife, the right to the land vests in said minors under section 2292, and can not be defeated by a subsequent contest on the ground that the entryman failed to comply with the law in the matter of residence. 29-275

257. Section 2292 is applicable only in case both parents are dead and only minor heirs survive; and where a homesteader dies leaving surviving a former wife, from whom he was divorced, and their minor child, his only heir, the rights and obligations of the minor are governed by section 2291, and not by section 2292. 40-638

258. Upon the death intestate of a homestead entrywoman, leaving surviving a

husband and a minor child, the latter does not have the sole right of succession to the entry, under section 2292, where under the statutes of the State the husband is an heir of his wife, but, in such case, the right of succession is to the heirs generally, under section 2291, and upon completion of the entry patent will so issue, leaving it to the local courts to determine who such heirs are and what their interests may be. 40-489

259. On the death of an entrywoman leaving minor children, the father of such children having died prior to allowance of the entry, the fee to the land vests in said minors under section 2292, irrespective of any question as to their heirship under local statutes. 29-325

260. The widow of a soldier who makes entry under section 2307, R. S., in her own name, and perfects title thereto, exhausts her rights under the law. 15-408; 29-163

261. The widow of a soldier, who made entry in her own right for less than 160 acres, is, under section 2, act of June 8, 1872, as amended by the act of March 3, 1875, entitled to make an additional entry of so much land as, added to the quantity previously entered, shall not exceed 160 acres. 31-349

262. Right of settler, with pending application, who dies prior to the disposition of an adverse record claim descends to the heirs. 22-300

263. Right acquired by settlement may be perfected by widow, heirs, or devisee of deceased settler the same as though based on formal application to enter. 6-134; 8-286

264. The right acquired by a settler who dies prior to survey may be exercised by his devisee. 9-452

265. The settlement of a homesteader who dies prior to expiration of the time given for assertion of his right, without having made application to enter, inures to his widow; and her subsequent remarriage will not defeat her claim as the successor to his right. 8-286; 24-181

266. In the case of an entryman who dies within six months after entry, without having established residence, leaving a widow and a minor child which soon

thereafter dies, and his widow subsequently complies with the law and earns title to the land, but dies prior to submitting final proof, her estate will not be divested of the inchoate right of property acquired by her compliance with law, but upon the submission of proof by persons claiming to be her heirs, showing her compliance with law, patent will issue in the name of the heirs of the deceased entryman leaving it to the courts to determine who under the law is entitled to the property. 33-434

267. A widow, as the legal representative of her deceased husband, may continue to cultivate his homestead, and at the same time may make entry in her own name. 2-169; 5-184

268. Where a single woman makes entry, and thereafter marries a man who has a similar claim, and the husband dies, the widow may submit proof under the claim of her husband, and also maintain her own claim, by compliance with law in the matter of residence, if no adverse right attached thereto during the time her legal residence was on the land covered by her husband's entry. 23-52

269. A marriage in violation of a State law prohibiting divorced persons from marrying within six months, may be presumed valid for the protection of a widow, claiming as such under the homestead law, where the homesteader acknowledged her as his wife after said period of six months, and the decree of divorce remains undisturbed, and the subsequent marriage has not been judicially annulled. 18-421

270. On the submission of proof by a woman claiming as the widow of a homesteader, the validity of her marriage will not be questioned by the department, at the instance of a protestant, in the absence of proper judicial proceedings to annul the marriage. 22-263

271. On the application of one claiming as the widow of a homesteader to make cash entry, the fact of marriage may be established by evidence of cohabitation and repute, it appearing that the statute invoked as against such marriage contains no words of nullity. 27-294

272. As between two claimants, each asserting the right to perfect an entry as the

widow of a homesteader, the department in the absence of a judicial determination of the legal status of the parties, will recognize the one who made her home on the land with the entryman, and who was married to him in the belief that his former wife was not then living. 22-124

273. The widow of a homesteader can not assert a claim as such where the entry is relinquished by an administrator and she for a term of years acquiesces in such action, and during such period valuable adverse rights intervene. 15-262

274. Where the entryman in good faith cultivates and improves the land, but dies without having established residence thereon, the widow may show her residence on the land and connection with the claim with the view to equitable action. 11-235

275. The minor daughter (19 years old), continuing in person or by proxy to cultivate and reside on land entered as a homestead by her father (who had filed his declaration of intention, but who had not obtained a certificate of naturalization), may by herself or guardian make final proof upon filing evidence that she has taken the oaths prescribed in section 2168, R. S. 2-100

276. Where the entryman had declared his intention of becoming a citizen, but had not been admitted to citizenship at the time of submitting final proof, the entry may be equitably confirmed for the benefit of the heirs, and patent issue in their names, where the entryman dies with his entry occupying such status, and a naturalized heir thereafter submits final proof. 25-1

277. Possession by an administrator is possession of the heirs, and the right of possession rests in the administrator as such. 6-672

278. An administrator is not authorized under section 2291, R. S., to consummate the claim of a deceased homesteader. 9-268; 28-53

279. There is no authority for an executor to consummate the inchoate claim of a deceased homesteader. 9-599

280. Where entryman (prior to act June 15, 1880) devised the land to his daughter, who afterwards resided on it

as head of a family, his widow, who deserted him prior to the entry, is barred.

2-82

281. Authorized sale under section 2292. R. S., vests full title in purchaser, who, to obtain patent, must pay office fees only.

2-75

282. The devisee of a single man who made formal application before his death has the right of entry.

2-85

283. A devisee is entitled to the same privileges that would descend to the heirs.

1-47

284. Devise of, must be of the land and not of the proceeds from the sale thereof.

1-64

285. Upon the death of a homesteader leaving no widow and no heirs qualified to take, a devisee to whom he has bequeathed all his right and interest in the land thereby becomes his representative entitled under the express terms of section 2291 to complete the entry as the next beneficiary in the order of succession named therein.

40-69

286. Where an instrument purporting to be the last will and testament of a deceased entryman is duly admitted to probate in the proper court, it will be recognized by the department as legally established.

33-342

287. The right to be heard as the heirs of an entryman will not be recognized in the absence of proof of his death, and a specific statement as to the parties claiming as his heirs.

18-322

288. The heirs of an alleged settler take nothing under a claim based on illegal residence of the decedent.

12-197

289. The alien heirs of an entryman are incompetent to make proof and secure title under section 2291, R. S.

13-228

290. In case of the death of an entrywoman, leaving surviving her an alien-born and unnaturalized husband and two minor children born in this country, the children are entitled to complete the entry and take title, as her heirs, under section 2291, R. S.

33-21

291. There is no provision of law by which any rights or claims to public lands, prior to the issuance of patent, can be devised or succeeded to and perfected by other than citizens of the United States.

34-51

292. An entryman who at the time of his death had not acquired the legal title to the land, was not at such time a person "holding real property," within the meaning of the treaty of March 2, 1899, between the United States and Great Britain, and his alien heirs, subjects of the latter country, have no such claim to the lands as is entitled to protection under said treaty.

34-51

293. The right of an alien heir to perfect a homestead entry, where the entryman dies without having earned title to the land, is not protected under a treaty that makes provision for the protection of alien heirs on the death of a person "holding" real property.

26-317

294. Widow or heirs required to cultivate and improve, but not to reside on claim.

1-636; 2-74;

3-465; 4-433; 7-309; 13-228

295. The failure of heirs to reside upon or cultivate the land operates as an abandonment thereof.

17-212

296. Failure of the heirs to cultivate the land embraced within the entry of a deceased homesteader excusable when due to armed violence and intimidation.

12-562

297. The heirs of a deceased entryman may delegate to another the power to perform for their benefit the cultivation required by law, and such cultivation, for the required period, constitutes compliance with law the same as though performed by the heirs themselves.

34-46

298. The heirs of a successful contestant, who make entry in the exercise of the preference right, stand in the place of the contestant, burdened with the same obligations relative to compliance with law in the matters of residence and cultivation.

36-26

299. Where the death of the homesteader is disclosed by the record, patent should issue in the name of the heirs generally. (See 21-377.)

9-401

300. Patent should issue in the name of the heirs generally when final proof is made by the heirs.

13-228

301. Where the heirs of a settler who died while engaged in the military service during the Philippine insurrection, make final proof under section 2305, R. S., as

amended March 1, 1901, final certificate and patent will issue to the "legal representatives" of the deceased entryman.

32-407

302. By virtue of section 2305, as amended March 1, 1901, proof of the death of an entryman while engaged in the military service renders unnecessary any showing touching his compliance with law in the matters of residence, cultivation, and improvement.

34-392

303. The properly constituted administrator of the estate of a deceased entryman is authorized to submit final proof under section 2305, as amended March 1, 1901, as his "legal representative."

34-392

304. Upon satisfactory proof of the death of an entryman while engaged in the military service, leaving no widow or minor children, it is the duty of the Land Department, under section 2305, as amended March 1, 1901, to issue patent to his "legal representatives," leaving it to the courts to determine in whom title shall vest.

34-392

IV. Deserted Wife.

305. A "deserted wife" is qualified, as the "head of a family," to make entry in her own right.

1-59; 9-186

306. A deserted wife can assert no right of entry based upon the canceled entry of her husband, but may enter in her own right.

3-187

307. The right of a deserted wife to make entry of the land settled upon or entered by her husband is not a right that she acquires through him, but is by virtue of the claim that she initiates in her own right and by her own acts after she has become qualified to make settlement and entry.

28-143

308. The right of a deserted wife to make entry will not be defeated by her erroneous designation as an "unmarried woman" in the preliminary affidavit.

28-504

309. In determining the right of a married woman, as a "deserted wife," to make entry, the fact of "desertion" is not necessarily disproved by the offer on the part of the husband of small sums for the

nominal support of the family and the refusal of such money by the wife. 9-186

310. The validity of an entry made by a deserted wife is not impaired by the subsequent return of the husband where such entry is made in good faith and with no intent on the part of the wife of ever resuming marital relations with her husband.

21-469

311. The right of a deserted wife to make entry of land on which she is residing at date of desertion will be recognized as against one claiming under a relinquishment executed by the husband in pursuance of a conspiracy to defraud the wife.

12-94

312. The right of a deserted wife, who is living on the land covered by the entry of her husband, attaches at once on the filing of his relinquishment, and defeats the intervening adverse entry of another.

24-535

313. The right of a deserted wife to enter the land embraced in the relinquished entry of her husband, depends upon her settlement on the land when his entry is canceled, and, as against an adverse claimant, must be asserted within three months from such cancellation.

28-20, 482

314. The right of a deserted wife to make entry of the land on which she is residing at date of desertion can not be defeated by one who, with full knowledge of the facts, obtains a relinquishment from the husband while he is intoxicated.

15-555

315. A married woman who applies for a divorce, on the conviction of her husband of a felony, is not entitled to plead the status of a deserted wife on account of her husband's absence in confinement, as against a prior intervening contestant who attacks the homestead entry of her husband.

20-245

316. In the case of a wife who is divorced on account of a crime committed by her husband that in effect dissolved the family relation, her status may be regarded as that of a deserted wife, and as such entitled to attack the entry of her former husband.

22-356

317. Married woman actually deserted by her husband is entitled to make entry,

as the head of a family, without regard to the period that may have elapsed since desertion. 15-596

318. Deserted wife, as the "head of a family," may make entry, and the subsequent return of the husband will not defeat the right to perfect the same where the application is made in good faith during the period of desertion and in the belief of the husband's death. 13-621

319. The status of a woman as a deserted wife is not affected by an illegal marriage after desertion. 28-482

320. A deserted wife may make entry, with credit for previous residence on the land, where her husband's entry thereof is canceled for failure to make final proof within the statutory period. 19-242

321. Deserted wife, as the head of a family, entitled to commute. 1-59

322. Additional entry in railroad limits by a deserted wife is illegal. 2-777

323. Where a deserted wife has submitted final proof on her husband's entry, and by departmental decision is required to submit new proof, but the record does not show that she was notified of such requirement, the entry can not be properly canceled for failure to submit final proof within the statutory period, except after due notice to the wife. 25-402

324. In determining the status of a woman claiming the right to submit final proof as a deserted wife, a decree of divorce obtained in a probate court of Oklahoma after August 14, 1893 (the date when such courts, under territorial legislation, ceased to have jurisdiction in matters of divorce), will be recognized as validated by the remedial act of February 28, 1895, of the Oklahoma Legislature. 28-406

325. Separation of husband and wife by mutual consent does not constitute the wife the head of a family, or authorize her to make entry as a deserted wife. 36-258

326. The rule allowing a child of the entryman who is not 21 years of age, but is the head of the family, to submit final proof, with a view to equitable action, where the deserted wife of such entryman is deceased, is equally applicable where the wife has been divorced. 28-406

327. Rules to be observed in cases of desertion:

1. If wife maintains her residence, she only shall be heard to allege desertion, in proof of change of residence or abandonment, for seven years after entry.

2. If she, within said seven years, proves desertion, she may enter the land in her own name if the head of a family, or, if she has the right to acquire real property, as a *feme sole*.

3. If she does not make such entry, she may make final proof in his name, as his agent, with her own affidavit to nonalienation, the entry to be submitted to the board of equitable adjudication.

4. She may, as his agent, commute the entry or purchase under section 2, act of June 15, 1880, and new entry shall be referred to board of equitable adjudication.

5. Where entryman's wife is deceased the foregoing rule shall apply to his child, not 21, who is head of a family. 2-81

328. A deserted wife or minor child may commute the entry of the husband or father only as an agent; entry to be referred to board of equitable adjudication. 2-81

329. A deserted wife or child may not make final proof, commute purchase under act June 15, 1880, or obtain patent, in her or his own right, by virtue of the husband's or father's entry. 2-78

V. Indian.

330. Right conferred upon Indians by act of March 3, 1875. 1-491

331. Settlement rights acquired prior to January 1, 1874, recognized by the act of March 3, 1875. 1-90

332. Circular as to proceedings to be observed in case of Indian applying to make, under act of July 4, 1884. 3-91

333. Rights can not be acquired by an Indian who maintains the tribal relation. 11-57

334. An Indian who has abandoned the tribal relation is entitled to the right of. 22-215

335. Rights of Indians controlled by specific legislation. 8-57

336. Right of, shown by agent's certificate. 4-143

337. Extent of compliance with the general law required. 4-143

338. Certain suspended Michigan entries to be examined after due notice. 4-143

339. Homestead entry made under act June 10, 1872, improperly canceled on a charge of abandonment, should be reinstated and opportunity given to show additional compliance with law. 14-543

340. Widow of Indian entitled to perfect entry where she leaves her home on the reservation and lives on the land with her husband prior to his death, and afterwards stays on the land and cultivates the same. 16-137

341. The act of January 18, 1881, for relief of Winnebago Indians, extended the time within which homesteads under the act of March 3, 1875, could be entered and completed for a period long enough to enable the claimants to use to advantage the money appropriated in making entries, erecting dwellings, and cultivating and improving the lands so entered and selected; such selections and entries (in Wisconsin) are not at present subject to contest. 2-191

342. Withdrawal of land for the benefit of Indian claimants under the homestead law precludes other disposition. 10-144

343. Prior to the act of March 3, 1875, there was no law authorizing settlement or conferring the right of entry under the public-land laws upon Indians, as such, who had severed their tribal relations. 20-401

344. The word "located," as used in the act of July 4, 1884, providing for Indian, is employed in the sense of settlement, and refers to a settler living on the land. 19-277

345. The act of July 4, 1884, confers the benefits of the homestead law upon "Indians" as distinguished from "citizens of the United States," and an Indian who, by virtue of having been allotted a tract of land, is a citizen of the United States and no longer an Indian within the purview of said act, is not entitled to take a homestead by virtue of its provisions. 30-375

346. The acts of March 3, 1875, and July 4, 1884, known as the Indian homestead acts, confer upon Indians, as such, who locate or settle upon public lands, or those not living upon a reservation, and who have severed their tribal relations, the right to make homestead entry as fully as citizens of the United States, except that for a certain specified time after the issuance of patent they are deprived of the power to alienate the lands. 37-219

347. By virtue of the sixth section of the act of February 8, 1887, every Indian who took an allotment under that act or under any other law or treaty, as well as every native born Indian who takes up his residence separate and apart from his tribe and adopts the habits of civilized life, becomes a citizen of the United States and entitled to all the rights, privileges, and immunities of such citizens, including the privilege of making entry under the homestead laws. 37-219

348. Where an Indian entitled under the act of 1887 to make homestead entry as a citizen of the United States, makes an Indian homestead entry, upon which a trust patent issues, he may, upon application therefor, have the trust patent canceled and patent under the general homestead law substituted therefor. 37-220

349. Until the issuance of final patent on an Indian homestead under the act of July 4, 1884, the Land Department retains jurisdiction over the land and is bound to protect the rights of the homesteader. 32-291

350. No preference right is acquired by filing a contest and procuring the cancellation of an Indian homestead entry made under the act of July 4, 1884. 32-291

The relinquishment of an Indian homestead entry made under the act of July 4, 1884, does not become effective until approved by the department. 32-291

351. A member of the Citizen Band of Pottawatomie Indians in Oklahoma, who has received an allotment of his share of the land held in common by his tribe, is not thereby disqualified from taking a homestead as a citizen of the United States. 30-375

352. The provisions of the act of May 27, 1902, authorizing the sale and conveyance of inherited Indian lands by the

heirs of a deceased allottee, apply to the heirs of all Indian claimants for portions of the public lands, to whom a trust or other patent containing restrictions upon alienation have been issued, whether the claim was initiated under what are known as Indian homestead laws or under Indian allotment laws. 32-657

353. An Indian to whom land in a reservation has been allotted as a member of a tribe, but which land has never become a part of the public domain subject to the general provisions of the homestead law, can not, as a citizen of the United States, make homestead entry, under section 2289, R. S., of the land so allotted to him. 34-702

VI. Second.

See XV, b, XVI, b HEREOF; ENTRY, VI.

- (a) Generally.
- (b) Act of June 5, 1900.
- (c) Act of February 8, 1908.
- (d) Act February 3, 1911.

(a) Generally.

354. Instructions of June 11, 1907, relative to second entries. 35-590

355. Instructions of March 29, 1910, respecting second entries. 38-507

356. Circular of January 27, 1905, relative to certificate required of an applicant to make second entry who is also entitled to make additional entry under section 2306, R. S. 33-364

357. Second, may be allowed where the first through mistake, was for untillable land. 1-56; 10-557

358. Second, allowed where water fit for domestic use could not be obtained on the land covered by the first 1-54; 9-207, 333; 21-390

359. A second entry is allowed where the land first entered fails to produce crops by reason of lack of rainfall or unfitness of soil. 2-171

360. The right to make a second may be properly recognized where the first, in good faith, was abandoned on account of poison ivy growing on the land, and the claimant's susceptibility to poisoning therefrom. 25-132

361. May not be made by one who relinquished a homestead because of the ravages of grasshoppers. 2-141

362. Second, allowed where the first covered land not habitable and the reasons therefor were not discoverable by ordinary diligence. 8-507

363. Where the right to make a second rests on the noninhabitable character of the land covered by the first the facts as to the nature and condition of both tracts should be clearly set forth. 9-207

364. An application for, based on the alleged worthless character of the tract covered by the existing entry, will not be granted, where it appears that the applicant did not make a personal examination of said tract prior to making entry thereof. 19-483; 26-23

365. The right to make a second may be recognized where the first was canceled on account of the entryman's failure to establish residence and such failure was due to circumstances beyond his control. 22-179

366. The language in section 2, act of September 29, 1890, authorizing a "second homestead entry," refers only to those who had theretofore made entry but failed from any cause to perfect the same. 11-625

367. The amendment of section 2289, R. S., by section 5, act of March 3, 1891, does not confer the right to make second, upon one who had theretofore entered a quarter section of public land under the homestead laws. 16-512

368. The filing of an unconditional relinquishment operates *eo instanti* to terminate the entry, which is thereafter no obstacle to the making of a second entry by the entryman, notwithstanding it may remain uncanceled of record. 37-382

(b) Act of June 5, 1900.

369. Instructions of June 27, 1900, under act of June 5, 1900, relating to second entries. 30-374

370. An entryman who failed to perfect title, and thereafter made a second entry under the act of March 2, 1889, which was also not perfected, but "lost or forfeited" was by the act of June 5,

1900, restored to the status of a qualified homestead claimant and became entitled to the benefits of the homestead laws as though the second entry had not been made. 31-25

371. One who made an entry which for any reason he failed to perfect and which was lost or forfeited prior to the act of June 5, 1900, was under that act entitled to the benefits of the homestead law as though such former entry had not been made, provided such right of second entry was exercised prior to the act of April 28, 1904. 36-221

372. Construing the acts of June 5, 1900, and April 28, 1904, together, the earlier act is held to be modified by the later, and all applications to make second entry filed subsequently to the later act should be disposed of hereunder, so far as the provisions of that act are applicable. 33-657

373. The right to make second entry, granted by the act of June 5, 1900, applies only in cases where the entryman had lost or forfeited his claim prior to said act; and one who has lost his claim by laches subsequent to the act is not within its benefits. 32-242

374. A homesteader who in fact abandoned his entry and in good faith executed a relinquishment thereof prior to June 5, 1900, is entitled to make second entry, although his relinquishment was not filed until subsequently to said act. 32-561

375. Purchase under section 2, act of June 15, 1880, exhausts the homestead right; and as such purchase is not the equivalent of commutation under section 2301, R. S., the purchaser is not entitled to make a second entry under section 2, act of June 5, 1900, which grants such privilege to any person who had theretofore made an entry under the homestead laws and commuted the same under said section 2301. 35-392

376. A homestead entry completed under section 2, act of June 15, 1880, by payment of the Government price, is not "commuted" within the meaning of section 2, act of June 5, 1900, and the entryman is not entitled to the right of second entry accorded by the latter act. 40-351

(c) Act of February 8, 1908.

377. Circular of February 29, 1908, concerning second entries under act of February 8, 1908. 36-291

378. In making second entry under the act of February 8, 1908, credit can not be allowed for the fees and commissions paid upon the original abandoned entry. 36-473

379. Credit for installments paid upon the Indian price for the land embraced in the original abandoned entry may be allowed in the second entry where it embraces land of the same class for which like payments are required. 36-473

380. No such rights are acquired by an application to make second entry while the first is still of record and not actually abandoned as will prevent the allowance of the subsequent application of another for the same land; and the act of February 8, 1908, can not be invoked in such case to the prejudice of the adverse applicant. (See 37-382.) 36-450

381. An application to make second entry which could not legally have been allowed under existing law and which was denied by the Land Department and pending on motion for review at the date of the act of February 8, 1908, can not be allowed under that act to the prejudice of the rights of another under a *bona fide* application for the same land made prior to said act. 36-518

382. A homestead entryman who disposed of the improvements upon his entry for a consideration and accompanied the sale by a relinquishment is not entitled to the right of second entry under the act of April 28, 1904, or the act of February 8, 1908. 37-506

383. No such right was acquired by a mere application to enter, without settlement or improvements, prior to the act of February 8, 1908, as will overcome the equities of a *bona fide* settler who at the time of such application was maintaining an actual residence and had made valuable improvements upon the land, and who is qualified under that act to make a second entry, especial, in view of the fact that he had a prior pending application for the same land, supported by a showing tending to evidence that he in fact had

never had the benefit of the homestead right. 37-382

384. A homesteader who had actually abandoned his entry, and which was subject to cancellation on the ground of abandonment at date of the act of February 8, 1908, comes within the provisions of that act, and is not disqualified as a settler with a view to second entry thereunder by reason of the fact that his abandoned entry is still of record. 38-381

385. The acts of April 28, 1904, and February 8, 1908, authorizing second homestead entries, do not take away from the Secretary the discretionary power theretofore vested in and exercised by him as head of the Land Department to permit second entries on equitable grounds in meritorious cases where the first attempt to exercise the homestead right failed of consummation because of accident, mistake, or other sufficient cause. 38-406

386. A homestead entryman who executes a relinquishment and places it in the hands of another, who disposes of it for a valuable consideration, is disqualified to make second entry under either the act of April 28, 1904, or the act of February 8, 1908, regardless of whether he actually receives any part of the consideration for which it was sold. 38-394

387. The relinquishment of a homestead entry in good faith, to avoid controversy with an adverse claim of prior right believed or reasonably apprehended to be superior, is in effect a confession of judgment of cancellation for conflict and not such a relinquishment as contemplated by the act of February 8, 1908, and is no bar to a second entry. 39-219

388. The act of February 8, 1908, can not be given a retroactive effect to protect the prior settlement claim of one disqualified to initiate a valid settlement, to the prejudice of a valid intervening adverse settlement claim. 40-453

(d) Act of February 3, 1911.

389. Instructions of February 28, 1911, under act of February 3, 1911, relating to second entries. 39-524

390. Instructions of May 17, 1911, under act of February 3, 1911, relating to second entries. 40-91

391. The right of second entry accorded by the act of February 3, 1911, is not limited to instances where the original entry was lost, forfeited, or abandoned prior to the act, but is equally applicable where the original entry, made prior to the date of the act, was lost, forfeited, or abandoned subsequent to that date. 40-613

392. An application to make second entry under the act of February 3, 1911, based upon settlement, can not be allowed where the settler was disqualified to make a valid settlement and the lands were withdrawn under the act of June 25, 1910, before he became qualified by virtue of said act of February 3, 1911; but if the settler is entitled to amend his original homestead to cover the land settled upon, the withdrawal will not bar his right of amendment merely because he filed application for second entry instead of for amendment. 40-571

VII. Additional.

See XV, XVI, HEREOF.

393. Additional entry under the acts of 1879, as amended May 6, 1886. Circular of July 26, 1886. 5-128

394. Act of March 3, 1879, construed with the second section of act of May 14, 1880, fixing the status of contestants. 1-93

395. Limitations of right to additional defined. 1-29

396. The right to make additional, extends to all persons entitled by entry or succession to make final proof. 1-24, 50

397. Widow of original entryman may make additional, under the act of March 3, 1879. 1-24

398. A married woman who previous to marriage had made an entry wherein she was restricted to 80 acres may make an additional entry. 1-38

399. The right to make additional entry exhausted when once used, irrespective of the amount entered. 3-599

400. The entry can only be made by the original entryman, or by one who has succeeded to his right and by virtue thereof holds the original homestead claim. 2-777

401. Persons making new or additional entries under acts of March 3 and July 1, 1879, have seven years to make final proof. 2-91

402. The right to make, under the act of March 3, 1879, is limited to those who had taken 80 acres and remained in possession, residing upon and cultivating the same at the date of said act. 6-575; 36-516

403. Relinquishment of original accepted and new entry allowed pending contest against the original for abandonment. 1-93

404. Under the act of March 3, 1879, limited to original entries on even sections made before said act and where the entry was restricted to 80 acres. 8-428; 12-351

405. The right to make, under the act of March 3, 1879, is limited to persons who by existing laws were restricted to an entry of 80 acres. 16-187; 20-55

406. Under the act of March 3, 1879, only where the applicant was legally restricted to 80 acres and the land applied for is subject to entry. 9-402

407. Right to make additional, not lost by the purchase of original under the act of June 15, 1880. 1-29

408. Additional can not be made if the original has been canceled. 1-92

409. Land covered by original and additional entries regarded as a compact body. 1-62, 69

410. The law subserved if original and additional are together used as a home. 1-62

411. Cultivation of land taken as additional, not required. 1-62

412. Subsequent to act of March 3, 1879, entries were not restricted to 80 acres. 2-30

413. Cancellation of original does not work forfeiture of an additional based thereon so as to relieve the land from the appropriation of the latter. 6-442

414. Where application for 80 acres was made in November, 1878, but owing to a prior entry, entry was not made until June, 1879, entry for an additional 80 acres is allowed. 2-30

415. Claimant may take land embraced in his former timber-culture entry as ad-

ditional, if he is the first legal applicant after relinquishment. 1-125

416. May be embraced within commutation. 1-100

417. The act of March 3, 1879, requires residence and cultivation for at least one year. 1-100

418. Under the act of March 3, 1879, an entry can not be maintained by acts of entryman's tenant in the matter of residence, occupancy, and cultivation. 11-412

419. An additional entry under the act of March 3, 1879, can only be made of land adjoining that embraced within the original entry. 29-647

420. The land embraced in an entry made under the act of July 1, 1879, must adjoin the original entry. 12-57

421. The residence required by the act of 1879 can not be established or maintained by tenant. 12-57

422. Entry under the act of May 6, 1886, may pass to patent without proof of settlement and cultivation if final proof has been made on the original entry. 12-550

423. One restricted to an entry of 80 acres within railroad limits may make an additional entry within an odd section whereby his original settlement such land was excepted from the grant and he has continued to cultivate and improve the tract. 12-395

424. Not authorized by section 5, act of March 3, 1891, amending section 2289, R. S. 16-530

VIII. Adjoining Farm.

See RESIDENCE, 259-265.

425. The right to make, does not relate back to the date of settlement under the original entry. 5-172

426. The right to make, is not enlarged or modified by the act of May 14, 1880. 5-172

427. Entry is a settlement claim that will defeat the right of a preemptor who has failed to file within the statutory period. 10-485

428. Not allowed to one who has had the benefit of the general law. 5-124

429. Under section 2289, R. S., can not be made by one who derives title to the

original farm through the provisions of the homestead law. 15-285; 22-95

430. The right to make adjoining farm entry under section 2289 can not be allowed where the homestead right has been once exercised, though for less than 160 acres. 21-22; 29-216; 34-537

431. Not authorized by section 2289, as amended by the act of March 3, 1891, when based upon a pending original homestead entry of an adjacent tract. 15-221

432. The original as well as the adjoining farm must be held for agricultural purposes, and the entryman must be the owner in his own right of the original farm. 14-361

433. Only such lands are available as basis for an adjoining farm entry as at the date of such entry occupy such a status that they might, if vacant on the records of the local office, be included in the entry; they being regarded, for administrative purposes, as constituting a part of the area so entered. 39-365

434. A town lot, or land appropriated to urban uses, can not be made the basis for an adjoining farm entry. 39-365

435. Ownership of an adjacent tract essential to right of entry. 14-516

436. Is invalid, and will not be allowed to stand if entryman was not the owner of the alleged original farm at the time of entry. 24-258

437. The sale and abandonment of the original farm, prior to submission of final proof under an adjoining farm entry, defeats the right to perfect such entry. 17-493

438. Owner of an undivided portion of a tract (less than 160 acres) may make adjoining farm entry. (See 9-344.) 1-38

439. An undivided interest in the original does not constitute such ownership as will afford a legal basis for. 9-344

440. Entry can not be made by one owning and residing on 160 acres who has given a bond for deed for half of it, conditioned upon payment for the land in three years. 2-96

441. Under section 2289, may be based upon the equitable ownership of an adjacent tract, and residence upon said tract for the period of five years after such entry warrants the submission of final proof. 10-100

442. Under section 2289, may be properly based upon the equitable ownership of an adjacent tract. 22-594

443. A life tenancy in the original farm is not sufficient to support an adjoining farm entry. 16-565

444. A deed executed by a widow, purporting to convey a specific portion of a "probate homestead," does not, under the laws of California, if there are minors, convey such an estate as will sustain an adjoining farm entry. 9-344

445. Adjoining farm, allowed to purchaser of original farm and before patent therefor. 1-61

446. Right of, under section 2289, requires residence on the original farm. 2-38; 10-579

447. Residence on the original farm prior to adjoining farm entry can not be computed as forming part of the requisite statutory period. 1-68; 5-172;

10-488; 13-713; 14-268; 15-572

448. Credit for residence prior to entry accorded under the act of May 14, 1880. (See 13-713.) 7-33

449. Adjoining farm, requires five years' residence except when there may be credit for military service. 1-69

450. Validity not affected by the entryman's acquiring title to other adjacent lands prior to final proof. 10-100

451. Original entry treated as adjoining farm to save the rights of the entryman. 1-71

452. An application to change a homestead entry for 160 acres into an adjoining farm entry, may be allowed on relinquishment of one subdivision embraced in the original entry, and the purchase of a tract adjacent to the remainder, and due showing of residence on the deeded land. 26-618

453. The right of a homesteader to change his entry to an adjoining farm homestead is not affected by his failure to comply with the law under his original entry of the tract, in the absence of a valid intervening adverse claim. 29-166

IX. Soldiers'.

454. Circular of October 11, 1910, defining soldiers' and sailors' homestead rights. 39-291

455. Soldiers' declaratory statement, circular of December 15, 1882, with blank forms. 1-648

456. Circular of June 21, 1901, under act of March 1, 1901, relative to homestead rights of soldiers and sailors of the Spanish war and Philippine insurrection. 30-623

457. The law authorizing the filing of a declaratory statement does not warrant the rejection of a filing on the ground that it was received through the mails. (See 21-553; 22-392.) 20-459

458. A declaratory statement received through the mail should not be allowed. 22-392

459. A declaratory statement transmitted to the local officers by mail has, when filed, the same effect as though filed in person. 38-357

460. The rule as to settlement, improvement, and entry of soldiers' homestead changed by circular of December 15, 1882. 3-301

461. Circular requirements of December 15, 1882, concerning soldiers' declaratory statement, discussed. 5-133

462. No right is acquired under a declaratory statement if the soldier did not actually serve 90 days in the Army of the United States. 16-372

463. A record of dishonorable discharge disqualifies the soldier for the exercise of the soldier's right; but when, by special act of Congress, the record is changed, and an honorable discharge directed, the soldier may then exercise said homestead right. 19-546

464. Service in the Army of the United States, in contemplation of sections 2304 and 2305, R. S., dates from muster-in and continues until terminated by death, muster-out, or other cause, regardless of the actual service rendered. 32-571

465. In computing the period of service of a soldier "who has served in the Army of the United States," within the meaning of section 2304, the entrance of the soldier into the Army will be considered as dating from his muster into the service, and not from his enrollment. 32-356; 34-291

466. In determining whether the length of military service rendered by an officer (who resigns) entitles him to file a de-

claratory statement, the period of service should be computed to the time when he receives notice that his resignation is accepted. 17-569

467. Declaratory statement can not be filed for unsurveyed land. 11-88

468. The oath of an agent (to noninterest and nonagreement for sale) required by circular December 15, 1882, must accompany filing. 2-214

469. The right of the entryman dates from filing declaratory statement. 1-48; 10-622

470. Declaratory filing is not an appropriation of the land. 1-80

471. While a declaratory statement is no bar to an adverse entry, such entry is subject to the subsequent assertion of rights under the declaratory statement, and if entry is made thereunder, the intervening adverse entry is excluded by operation of law. 27-597

472. On the allowance of an entry, based on a prior declaratory statement, where there is an intervening adverse entry of record, the local office should advise the intervening entryman and give him opportunity to assert his rights. 27-598

473. The right of a soldier relates back to his filing if the entry is regular and the right to an additional entry goes therewith. 1-48

474. The failure to file a "nonsooner" affidavit, with a declaratory statement (in Oklahoma) may be subsequently remedied, even though an intervening adverse claim to the land may be asserted. (See 19-37.) 26-54

475. Where a soldier selects the land and makes the declaratory statement in person in his own name, the prescribed form should be verified before some officer designated in the act of March 4, 1904. 38-357

476. Where the selection and declaratory statement are made by agent, the appropriate form should likewise be executed by the agent before some officer designated by that act, but the soldier's affidavit showing his qualifications, etc., may be executed before any officer having a seal and qualified to administer oaths generally, but not necessarily in the land district. 38-357

477. A declaratory statement is no protection to a prior settlement, but is in itself the initiation of a right to make homestead entry. (See 27-532.) 22-679; 26-630

478. A homesteader can not claim the privilege of a declaratory statement and a settlement at the same time. 21-156

479. A homesteader who files a soldier's declaratory statement thereby waives any prior settlement made on the tract and can not thereafter take advantage of such settlement as against an intervening adverse claimant. (See 27-532.) 19-241; 27-334

480. Where one who files a declaratory statement is also the prior settler, he may make such settlement the basis of his right by making application to enter under the act of May 14, 1880, or he may permit the time fixed by said statute to expire and then make entry under his declaratory statement. 27-522, 598

481. One who files a declaratory statement will not be heard to allege settlement prior thereto, if he fails to assert his claim within three months from the date of the settlement. 27-598

482. Declaratory statement may be filed by an agent, but such agent can not lawfully appoint a subagent unless by the prior or subsequent consent of his principal. 2-215

483. Declaratory statement filed by agent and accepted by the local office will protect the homesteader though the agent may not have the power of attorney required by the regulations. 7-202

484. Declaratory statement filed while claimant is residing upon and claiming a different tract under the preemption law, for which proof is afterwards made, is illegal, and will not protect the homesteader as against the intervening settlement of another. 8-200

485. A declaratory statement filed by one residing upon and claiming another tract under the preemption law, which he afterwards secures under said law, does not reserve the land as against an intervening right during the subsequent period of residence on the preemption claim. 10-642

486. Conceding that declaratory statement is illegal if filed when claimant was

residing on another tract under the preemption law, such illegality is cured by subsequent entry under the filing, after completion of the preemption claim, and in the absence of any intervening right. 7-225; 11-288

487. Right exhausted by the filing and abandonment of a soldier's declaratory statement. 4-562; 5-133

488. A declaratory statement relinquished on account of the worthless character of the land exhausts the homestead right where due diligence was not used to ascertain the character of the land. 22-18

489. A declaratory statement filed by an authorized agent, and abandoned, exhausts the homestead right of the soldier. 19-60, 274

490. The filing of a declaratory statement does not exhaust the homestead right if a superior claim exists. 21-156

491. Right exhausted by filing declaratory statement and abandonment thereof; whether filing was made by the soldier, his widow, or the guardian of his minor children. 7-136

492. Right not exhausted by filing declaratory statement and abandoning the tract, when such filing was rendered inoperative by a prior adverse claim. 7-385; 35-499

493. Filing declaratory statement did not exhaust the homestead right where entry was made prior to the circular of December 15, 1882. 8-547

494. Filing a declaratory statement does not, under the act of March 2, 1889, exhaust the homestead right. 9-145, 382; 11-384

495. The filing of a declaratory statement for a tract covered by the prior settlement of another, subsequently asserted in the form of an entry, will not defeat the preferred right of a contestant who successfully attacks said entry. 20-334

496. To secure the right initiated by a declaratory statement, settlement, improvement, and entry must follow the filing within six months. 1-79; 3-17, 281; 5-353; 8-200

497. By failure to enter in time the right to file declaratory statement may be exhausted. 3-17

498. A soldier who has filed a declaratory statement is entitled to six calendar months within which to make entry and commence settlement and improvement; and in the computation of such time the day of filing the declaratory statement should be excluded and the last day of the specified period included. 24-38

499. Failure to make entry and settlement within six months after filing declaratory statement may be excused for climatic reasons, subject to intervening rights. 6-368

500. Entry not allowed for other land within life of filing. 4-561

501. None but the widow or minor orphan children can have credit for the deceased soldier's service in making an original entry. 2-244

502. The right to make entry under section 2307 is not transferable, and any contract entered into either before or after entry, which contemplates the sale thereof, is in violation of law. 32-332

503. The soldier's children take, not as heirs, but as donees, and are substituted to the soldier's rights where there is no widow, or in the event of her marriage or death. 2-242

504. Upon the death of a soldier entitled to make entry under section 2304 without having exercised such right, leaving a widow and minor orphan children, no rights can be acquired by such minor children, under section 2307, prior to the death or remarriage of the widow without having exercised her right under said section. 33-477

505. By the filing of a declaratory statement a claim is initiated, which upon the death of the soldier prior to completion of entry, not leaving a widow, is cast upon his heirs, who may do all things necessary to its completion, in the same manner as the heirs of an ordinary homesteader who dies before consummation of his claim. 33-331

506. Application for minor orphan children must be made on the ordinary forms, name the children, and be signed by the guardian; guardian must make the affidavit at the local office, or, if he or one of the children is residing on the land, before the county clerk. 2-244

507. The entire term of the soldier's enlistment is to be credited to the widow, although he was discharged before its expiration because of the close of the war. 2-179

508. The validity of a, made on behalf of a minor by his curator, is not affected by the unauthorized agreement of said curator to convey the title, when acquired, to another person. 25-207

509. A minor orphan child surviving and coming of age before time for making final proof will not be required to establish residence, but must improve and cultivate the land. 2-101, 244

510. Under entry made for minor orphan children residence is not required. (See 32-331.) 10-528

511. Made for minor heirs requires cultivation and improvement of the land. 10-482

512. The cultivation and improvement of the land procured by the curator of a minor is a sufficient compliance with the law as construed by the regulations then in force. 25-207

513. Proof of settlement by the widow not required under an entry made at a time when the regulations recognized cultivation as substantial compliance with the law, if proof of cultivation is duly furnished. (See 32-331.) 22-351

514. The widow or minor children of a soldier or sailor, making entry under section 2307, R. S., must comply with the homestead laws as to residence and cultivation the same as a soldier or sailor making entry under section 2304. 32-331

515. Instructions of July 7, 1904, in Anna Bowes case, relative to the requirement of residence on a homestead taken under section 2307. 33-84

516. Where an entry under section 2307 was perfected prior to the decision in the Anna Bowes case, under departmental rulings holding that actual residence upon the land included in such entry is unnecessary, such entry, if otherwise regular and valid, will be passed to patent without regard to said decision and the instructions thereunder. 33-126

517. Nothing in section 2304 authorizes a soldier to make a homestead entry who

has perfected an entry under the general act. 24-561

518. No rights were taken away by the enactment of sections 2304 and 2305. 4-399

519. Entry made through agent by a person in the naval service is within the provisions of section 2308. 3-446

520. Residence, improvement, and cultivation for a period of one year at least must be shown to authorize patent. 7-362

521. Made in good faith without the requisite period of residence, and in the hands of a *bona fide* transferee, may be equitably confirmed. 22-589

522. Made under soldier's filing may be commuted. 4-399

523. Patent not authorized unless it appears that entryman is a citizen at date of final proof. 7-362

X. Soldiers' Additional.

See XIV HEREOF; ALASKAN LAND, 31, 98, 107-109; CONFIRMATION, 75-S3; CONTEST, 439-441; INDIAN LANDS, 266, 297, 326, 333, 444, 489.

- (a) Generally.
- (b) Basis of Right; Military Service.
- (c) Lands Subject to.
- (d) Entry.
- (e) Certification of Right.
- (f) Assignment; Powers of Attorney.
- (g) Widow; Minor Children; Estate.
- (h) Approximation.
- (i) Act March 3, 1893.
- (j) Act August 18, 1894.

(a) Generally.

524. Is not a homestead right. 33-523, 527; 39-93

525. Extent of additional entry determined by the difference between the original entry and 160 acres. 5-10

526. Right is limited to such an amount of land as added to the amount previously entered shall not exceed 160 acres, even though the entryman may have paid cash for a portion of the original entry as excess land. 32-644; 33-274

527. Right exhausted when once used, irrespective of the amount entered. 3-509

528. Right not exhausted by a location which, through no fault of the locator, proved invalid. 6-290

529. The inadvertent use of the same original entry in a certificate subsequently issued does not invalidate a location upon the prior and *prima facie* valid certificate. 2-239

530. Application nominally by one acting as agent, but in fact for himself, and without any intention on the part of the soldier to comply with the law, is illegal. 8-608

531. No good reason exists for requiring the personal presentation of an application to make additional entry, by either the soldier or his assignee, and if the proofs establish the facts necessary to the existence of the right in the applicant, and the character of the land, they are sufficient, even though executed before some officer authorized to administer oaths outside of the land district in which the land is situate. Proof as to the character of the land may be made by any person having personal knowledge of the premises. 31-320

532. Where application is rejected solely for want of satisfactory proof of identity of the soldier and the entryman, and the claimed right is not found invalid, the owner is entitled to have the additional right papers returned to him. 37-142

533. Where application is rejected for invalidity of the base, and no like valid base is supplied, substitution of a forest reserve lieu selection will not be allowed to the prejudice of intervening adverse rights. 35-226

534. The fact that a woman who applies to locate an additional right is under 21, is no ground for rejection of the application, if under the laws of the State she has attained her majority. 36-387

535. Section 2296, R. S., which provides that no lands acquired under the homestead law shall become liable to the satisfaction of any debt contracted prior to patent therefor, does not protect a soldier's additional right from sale under proper judicial proceedings. 33-420

536. Circular of January 27, 1905, relating to certificate required of an applicant to make second entry who is also entitled to make additional entry under section 2306. 33-364

537. One entitled under section 2, act of March 2, 1889, to a second entry for 160 acres, does not, by an entry under said act for a less area, affect his right to make additional entry under section 2306, where the aggregate of both entries does not exceed such quantity. 31-430

538. One entitled under section 2, act of March 2, 1889, to a second entry for 160 acres, and also to a soldiers' additional entry for 80 acres, can not exercise both rights so as to acquire more than 160 acres in the aggregate. 33-329

539. Where one entitled under section 2, act of March 2, 1889, to a second entry for 160 acres, and also to a soldiers' additional entry, exercises the former right, he thereby forfeits the latter; and such additional right is not, under section 2, act of June 5, 1900, restored by commutation of the second entry. 36-231

540. Where one entitled to an additional entry for 80 acres assigns such right and the assignee files application to make entry thereunder, and the Land Department thereafter, notwithstanding the pendency of such application, permits the original entryman to acquire title to 160 acres under the act of March 2, 1889, the rights of the assignee under the assignment and the application are in no wise affected by such erroneous action. 33-362

541. Directions given for the preparation of regulations requiring all persons entitled to make entry under section 2306 who seek to make a second entry under the act of March 2, 1889, for a greater amount of land than was embraced in the entry made prior to the adoption of the Revised Statutes, to furnish an affidavit to the effect that the applicant has not sold or assigned his additional right of entry. 33-362

542. A soldier entitled to the benefits of section 2306 does not, by making an invalid adjoining farm entry, as additional to his original homestead entry, lose his rights under said section. 31-26

543. Where one entitled to a right of 80 acres under section 2306, based upon an original entry canceled upon relinquishment, was permitted to make a second entry for 80 acres, at a time when there was no law authorizing second homestead

entries, and patent having issued upon such entry, it will be regarded as having been made in the exercise of, and as exhausting the soldiers' additional right. 37-4

544. Where one entitled to an additional right, based upon an original entry canceled for abandonment, was permitted to make a second entry for not exceeding the area of the right, at a time when there was no law authorizing second homestead entries, the second entry might properly have been treated as made in the exercise of the additional right and title permitted to be perfected; but where the title was never so perfected, the second entry having also been abandoned, at a time when the Land Department erroneously required residence and cultivation upon soldiers' additional entries in instances where the original entry had been abandoned, the entryman can not be held to have exhausted or in anywise affected his soldiers' additional right by making the second entry. 36-486

545. The fact that one who has made a soldiers' additional entry was erroneously required to reside upon and cultivate the land, in accordance with the practice of the Land Department at that time, exacting residence and cultivation upon soldiers' additional entries in instances where the original entry had been abandoned, will not, upon voluntary relinquishment of such additional entry, entitle him or his successors in interest to again exercise the right, unless it be clearly shown that he was prejudiced by the erroneous requirement under the former additional entry. 40-188

546. A soldiers' additional right attaches only from the date of the application to locate the same, and prior occupancy and improvement of land can not avail as the initiation of a claim under an application to locate a soldiers' additional right. 39-597

547. An application to locate a soldiers' additional right does not preclude the filing of an adverse application to enter the same land, subject to determination of the validity of the additional right; and in case the additional right be found invalid, the intervening adverse applica-

tion attaches and bars substitution of another right in lieu of the one held invalid. 39-208

548. In case of the substitution of a soldiers' additional right in lieu of a similar right held invalid, the application under the substitute right does not relate back to the date of the original application, but runs only from the date of the substitution. 40-408

549. Where one claiming ownership of a soldiers' additional right by virtue of purchase thereof at a sale by the administrator of the estate of the deceased soldier under probate proceedings locates the same, and another files protest against issuance of patent upon such location, claiming ownership of the right in himself through an alleged sale of the right by the soldier prior to his death, and furnishes evidence persuasive but not conclusive of his ownership, the department will not issue patent upon the location until the protestant has been afforded opportunity to proceed directly in the court which granted letters of administration upon the soldier's estate and ordered sale of the right, with a view to having such proceedings set aside, or to furnish clear and convincing proof of the soldier's sale of the right prior to his death. 39-194

(b) Basis of Right; Military Service.

See CONFIRMATION, 81-82.

550. Entry is not authorized where the original is made subsequent to the adoption of the Revised Statutes. 13-333

551. Where the soldier rendered the requisite military service and made entry for less than 160 acres prior to adoption of the Revised Statutes, proper foundation exists for an additional entry under sections 2306 and 2307, notwithstanding the soldier may have died prior to enactment of said legislation. 34-333

552. A homestead entry made subsequent to approval of section 2306, as the result of a contest against a former entry covering the same land initiated prior to approval of said section, though not carried to a successful termination until subsequent thereto, does not constitute a sufficient basis for an additional entry. 32-285

553. Abandonment of original entry does not defeat the soldier's right to make entry under section 2306. 28-216

554. Right not dependent upon consummation of original entry. 31-349

555. Circulars of February 21 and March 26, 1908, governing location of additional rights. 36-278, 346

556. Notice of application to locate must be published and posted. 36-522

557. Allowed when a quantity less than 160 acres was entered before June 22, 1874. 1-50

558. The filing of a soldiers' declaratory statement is not the equivalent of an entry, and therefore not the basis for an additional right. 31-356

559. Where part of a homestead entry is canceled for conflict with a railroad grant, and the entryman thereupon elects to relinquish his entire entry, with the privilege of making a new entry elsewhere, there is no basis for a soldiers' additional right. 31-258

560. To entitle one, otherwise qualified, to make an additional entry under section 2306, he must not only have made entry for less than 160 acres prior to the enactment of that section, but must have thereby, under existing laws, exhausted his homestead right. 32-262

561. A homestead entry allowed upon an application executed outside the land district wherein the land is located is not for that reason void, but voidable merely, and furnishes a sufficient basis for a soldiers' additional right. 35-179

562. A homestead entry based upon an application executed before a commanding officer of the United States Army, under section 2293, R. S., at a time when the applicant was no longer in the military service, is not for that reason void, but voidable merely, and furnishes a sufficient basis for a soldiers' additional right. 37-712

563. No right of additional entry exists where the original entry of the soldier was made for land embraced in an approved swamp-land selection upon which patent subsequently issued to the State, as the soldier's original homestead right was not thereby exhausted. 35-234

564. Where the entry of a soldier was erroneously canceled as to part thereof,

under the mistaken belief that such portion was not subject to entry, he is entitled to an additional entry of so much land as added to the uncanceled portion will amount to 160 acres. 33-78

565. The death of a soldier who while in the military service executed an affidavit under the act of March 21, 1864, authorizing another as his representative to make homestead entry for his benefit, operates to revoke the authority, and an entry thereafter allowed upon such authorization is null and void and does not constitute a basis for an additional right under section 2307. 40-62

566. Without proof of military service there is no right of entry. 4-223

567. The right does not exist where the period of military service is less than 90 days. 7-287

568. The right does not extend to members of the Missouri Home Guard. 2-235; 7-236; 8-235; 17-79; 32-44

569. The act of May 15, 1886, did not confer the right to make, upon members of the Missouri Home Guard. 7-236

570. Members of the Sixth Regiment Delaware Infantry Volunteers, organized and mustered in under special contract for duty in that State, are entitled to credit for military service, as a basis for soldiers' additional rights, only from the date or dates on which they were called upon to perform active military duty and not from the date of muster in. 38-47

571. The qualifications of a soldier who makes application under section 2306, determined under section 2304. 31-428

572. To entitle a soldier to the benefit of sections 2304 and 2306, he must have served at least 90 days from the date of his muster into the service. 32-500

573. The right is dependent upon service for 90 days by the soldier; and there is no authority for crediting him with the term of his enlistment where he was discharged for disability before serving 90 days. 37-588

574. In computing service the entrance of the soldier into the Army will be considered as dating from muster in and not from enrollment. 32-356, 571; 34-291

575. Mere suspicion of forgery, from a comparison of signatures on Army pay

rolls, without allegations or other proof, may not impair the claimant's right.

2-240

576. The record of the United States relating to the enrollment, muster, and discharge of members of its armies must control in all actions of the departments of the Government; and the fact that a State record with respect to the service of a soldier does not agree with the United States record can not be considered as in anywise impeaching the record of the Government. 37-588

577. The provisions in section 2305 with respect to soldiers "discharged on account of wounds received or disability incurred in the line of duty," were made solely with respect to the credit that should be allowed a soldier for his military service in computing the period of residence under an original entry, and in no way bear upon the qualifications of an applicant under section 2306, whose status must be determined under section 2304. 31-195

578. To entitle one to the privileges conferred by sections 2304, 2306, and 2307, the soldier, whose military service is the basis for the right must have been honorably discharged; and such fact can not be inferred from the official record which shows that the soldier was "dismissed the service." 36-347

579. An enlisted man who was discharged by reason of reenlistment, and subsequently deserted, was not "honorably discharged" within the meaning of section 2304, and no rights under section 2307 can be predicated upon his service. 38-164

580. The right of an enlisted man who was honorably discharged to an additional entry under section 2306 is not affected by the fact that he deserted from a prior enlistment. 40-461

581. An enlisted man who deserted but subsequently enlisted again and served for a term of 90 days or more and received an honorable discharge from such enlistment is deemed to be honorably discharged within the meaning of section 2304. 40-225

582. Sections 2306 and 2307 do not contemplate more than one additional right

founded upon one and the same military service. 34-333, 339

583. The existence of a valid additional right based upon an entry made by the soldier, precludes an independent additional right to his widow, or after her death to the heirs of her estate, based upon an entry made by her 34-333

584. Location having been allowed of a portion of an additional right based upon an entry made by the widow of a soldier, and recertification made for the remainder of the right, it is held, upon application being made for the allowance of a further additional right based upon an entry made by the soldier himself, that no foundation therefor exists, the additional right allowed on the entry of the widow being considered as having been based upon the entry of the soldier. 34-339

(c) Lands Subject to.

585. The right to locate additional homestead not to be employed as against actual settlers. 3-315

586. Unlawful possession of land no bar to location by another. 4-560

587. Land occupied for townsite purposes not subject to entry. 14-368; 32-374

588. Right to make entry can not be exercised upon lands occupied for the purposes of trade and business. 10-691; 13-665

589. Lands which for a long period of time have been with the knowledge and acquiescence of the Government included within the limits of a reservoir used as a feeder of a canal, in the maintenance and operation of which the Government is interested, are not "unappropriated public lands" and are therefore not subject to soldiers' additional entry. 30-611

590. Soldiers' additional may not embrace noncontiguous tracts. (See 29-599.) 13-519

591. An applicant to enter noncontiguous tracts may elect which of the tracts he will take in full satisfaction of right. (See 29-599.) 13-519

592. There is no statutory requirement that the tracts located under an additional right shall be contiguous, or form one compact body. 1-50; 3-472; 29-599, 643

593. May not be made on a tract withdrawn for sale under section 2455, R. S. 2-242

594. Lands withdrawn under reclamation act are not subject to additional entry. 33-520, 525

595. An application to make additional entry, in attempted substitution for a similar application theretofore filed and rejected for invalidity, can not be accepted in the face of an intervening withdrawal for forestry purposes; nor can the original invalid application, held for rejection prior to creation of the forest reserve, be regarded as a "lawful filing" within the exception in the proclamation establishing the reserve. 35-184

596. Where a location is relinquished as to a portion of the land because of insufficiency of the base, substitution of other base for such relinquished portion, as of the date of the original application, can not be allowed in the face of an intervening withdrawal for forestry purposes. 37-112

597. A withdrawal for coal classification under the act of June 25, 1910, does not defeat a pending application to locate a soldiers' additional right or bar applicant's right under the act of March 3, 1909, to take a surface patent for the land. 39-561

598. A soldiers' additional application presented prior to the act of June 22, 1910, for land theretofore withdrawn by departmental order from filing or entry under the coal-land laws, is within the proviso to the first section of the act of June 22, 1910, and applicant is entitled to carry the application to completion and receive the restricted patent provided for by that act, notwithstanding a subsequent executive withdrawal of the land for coal classification under the act of June 25, 1910. 39-603

599. Mere paper locations, under the placer laws, of lands alleged to contain oil, upon which no discovery of oil has been made and upon which the mineral claimants are not prosecuting with diligence the work for making a discovery of oil, do not prevent appropriation of the land by location of soldiers' additional rights. 40-112

600. Equitable title under soldiers' additional applications made for lands covered by such paper locations vests when the applicants have done all that they are required to do, unless the lands are at that time known to be oil lands.

40-112

601. In determining the oil or nonoil character of the lands covered by the soldiers' additional applications, evidence as to the discovery and development of oil in adjacent lands, and as to their geological formation, and the relation of the tracts in question to known oil fields, may be admitted and considered.

40-112

602. No such right is acquired by a mere application to locate a soldiers' additional right pending at the date of a power-site withdrawal as entitles the applicant to a hearing to determine whether or not the land is valuable for power-site purposes or is in fact a power site.

40-553

603. An application to make soldiers' additional entry, pending at the date of an Executive order, under the act of June 25, 1910, reserving lands for power-site purposes, is not a homestead entry within the meaning of the excepting clause of that act and therefore is not effective to except the land from the operation of the executive order.

40-235

604. The provision in section 1, act of June 22, 1910, that lands withdrawn or classified as coal shall be subject to entry under the homestead laws by actual settlers only, the desert-land law, to selection under the Carey Act, and to withdrawal under the reclamation act, with reservation to the United States of the coal therein, does not include soldiers' additional rights, and soldiers' additional entry of lands withdrawn or classified as coal can not be allowed under that act.

40-408

605. In case of the substitution of a soldiers' additional right in lieu of a similar right held invalid, the application under the substitute right does not relate back to the date of the original application, but runs only from the date of the substitution; and where at such date the land was embraced in a coal land withdrawal under the act of June 25, 1910, the applicant has no rights entitled to

protection under the proviso to section 1 of the act of June 22, 1910.

40-408

606. Where the land embraced in an application to make soldiers' additional entry is subsequently included in a withdrawal for phosphate reserve, the application will be held in suspension pending final determination as to the character of the land; and, if it be found to contain phosphate, the application, although otherwise valid, will thereupon be rejected, but, if found to be nonphosphate and restored to entry, the application will then be allowed, unless other reason exists for its rejection.

40-410

607. Lands within the former Nez Perce Indian Reservation, opened under section 5 of the act of February 8, 1887, to "actual settlers," and under the act of August 15, 1894, to settlement and disposal under the homestead, townsite, timber and stone, and mining laws only, are not subject to appropriation by location of soldiers' additional rights.

40-413

608. Lands in the former Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indian Reservations, opened under the act of May 1, 1888, "to the operation of the laws regulating homestead entry, except section 2301 of the Revised Statutes, and to entry under the townsite laws and the laws governing the disposal of coal lands, desert lands, and mineral lands; but are not open to entry under any other laws regulating the sale or disposal of the public domain," are subject to appropriation under section 2306 by location of soldiers' additional rights.

39-561

609. Lands in the former Rosebud Indian Reservation opened by proclamation of August 24, 1908, under the act of March 2, 1907, to disposal under the homestead and townsite laws, are not subject to appropriation by location of soldiers' additional rights.

40-54

610. Lands in the Southern Ute Indian Reservation opened by proclamation of April 13, 1899, to occupancy and settlement and to entry under the desert, homestead, and townsite laws and the laws governing the disposal of coal, mineral, stone, and timber lands, are not subject to appropriation by location of soldiers' additional rights.

40-550

(d) Entry.

611. The validity of an entry is not affected by the fact that it is made for the benefit of another. 23-462

612. Made in pursuance of a contract to sell the land on the issuance of final certificate should be canceled as speculative and fraudulent. 19-163; 20-516

613. Made through an agent in accordance with existing practice will not be disturbed. 5-289; 7-165

614. Made by an attorney in fact, based on a certification of the additional right, and regularly allowed under the regulations, exhausts the additional right. 18-110, 129

615. Made under a power of attorney, on a certificate of additional right, is a nullity if at the time of the entry the soldier is not living. 13-484

616. Made under a power of attorney and then canceled, can not be lawfully reinstated, where the soldier after such cancellation revokes the power, makes an additional entry in his own right, and secures patent thereon. 17-512

617. Made under a certificate of right and power of attorney after notice of the illegality of the certificate and fraudulent character of the power, and subsequent to the exercise of the soldier's right in person, is invalid, and must be canceled. 20-91

618. Where certificate has issued to one (in Missouri Home Guard) without right of additional entry it is void and entry made under it must be canceled. 2-235

619. A subsequent deed of ratification by the soldier will not validate an entry made under an attempted transfer of the soldier's right. 15-114

620. By the allowance of entry the additional right is merged in the land, and upon cancellation of the entry title to the right vests solely in the entryman or his assigns. 37-104

621. Allowed upon an invalid additional right while of record segregates the land, and no rights are acquired under a subsequent application covering the same land which will prevent the substitution of a valid right as basis for the entry. 35-422

622. Residence and cultivation must be shown where the original entry is abandoned

and the land purchased under section 2, act of June 15, 1880. 13-694

623. Residence and cultivation required where the original entry was canceled for failure to make final proof. (See 24-502.) 5-10

624. The purchaser of the certificate, having made entry, allowed to buy the land under section 2, act of June 15, 1880. 2-238

625. By a purchase under section 2, act of June 15, 1880, the original entry is merged in the title secured under said act, the certificate is thereby satisfied, and the certified right of the soldier exhausted. 28-204

626. The privilege of purchase accorded by section 2, act of June 15, 1880, and the title obtained thereunder, rest upon and have their inception in the original entry, which is merged in the higher and perfected title obtained by compliance with the provisions of said section, and by purchase thereunder the original entry is merged in the title received under said act, the certificate is thereby satisfied, and the certified right of the soldier exhausted. 32-348

(e) Certification.

627. No statutory authority for certifying additional rights. 6-557

628. No statutory authority for the certification of additional rights, nor is such action necessary to the exercise of the right either by the soldier or his transferee. 23-152

629. Circular of February 13, 1883, discontinuing certification. 1-654

630. Status of certificates issued before and after February 13, 1883. 4-323

631. "Pending cases" excepted from regulations of February 13, 1883, were those pending on application for certification. 7-353

632. Certificate will not issue if it appears the soldier has parted with his interest and that it will inure to the benefit of the assignee. 7-565; 10-354

633. Though the circular of February 13, 1883, reserved from its effect pending cases and those filed within a specified period, such exception was not a guaranty that certificates would issue in said cases, but

merely an assurance of their adjudication under the circular of May 17, 1877. 6-557

634. Certification discontinued by order of February 13, 1883, except as to applications filed prior to March 16, 1883, and where an application so pending is subsequently denied, and the soldier exercises his right in person, a certificate thereafter issued and recertified for the benefit of an assignee confers no right. 27-565

635. Based on a certificate of right improvidently reissued after a final judgment that the claimant was not entitled to make such entry, is a nullity and must be canceled. 16-484

636. A certificate issued to one not entitled is illegal and void, and an entry made under it must be canceled. 2-237

637. On cancellation of entry because the land was not subject thereto the certificate of right, issued in accordance with existing regulations, should be returned without alteration. 6-459

638. The exercise in person of the right, pending application for the certification thereof, precludes further action on the application. 7-356; 10-354

639. Any certificate of right issued by the General Land Office may be located by agent. 2-240

640. Certificates should be delivered to the agent who filed the claim if he has properly discharged his duty, though a later power of attorney may have been filed by another. 1-34

641. The department will not consider questions between attorney and client arising on application for certification where the claim for the certificate no longer exists. 7-356

642. Certificate will not issue for the benefit of one claiming under an assignment. 10-354

643. The circular of February 13, 1883, does not authorize certification for the benefit of an assignee. 10-354

644. Certificate will not issue where the applicant, by a previous additional entry, exhausted his right under the construction of the law then prevailing. 9-388

645. Certificate issued to widow may properly require her to show that she has not remarried. 5-264

646. The certificate may properly contain the condition "if shown to be still

living at date of application to enter in his name." 4-323

647. If under existing practice a certificate issued to the soldier in his lifetime, and it is shown that it has been lost or destroyed, a duplicate may issue on application of the personal representative of the deceased soldier. 29-658

648. If a soldier entitled to additional entry dies without having exercised said right, leaving no widow or minor orphan children, the right vests in his personal representative; and a duplicate certificate may issue, in the name of the deceased soldier, on application of the executor of his estate, it being shown that the original has been lost or destroyed. 29-510

649. The circular of May 17, 1877, authorizing certification, did not contemplate or authorize certificates to members of the Missouri Home Guard. 6-557

650. The act of May 15, 1886, authorizing the Secretary of War to issue certificates of discharge to the members of the Missouri Home Guard, does not warrant the department in returning to the practice of certifying additional rights. 6-557

651. Where an entry allowed on an additional right was canceled, recertification, even though otherwise proper, will not be made except upon satisfactory showing that no sale of the entry was made prior to cancellation, or if made that the right was reacquired and is vested in the person seeking recertification. 37-104

652. Where a party has been given a mere power to locate a certificate, uncoupled with any interest, it is unnecessary for the present holder, upon applying to locate the certificate, to furnish the affidavit of such party showing whether or not he now has any interest therein. 31-105

653. Where application for a certificate was made at a time when the practice of certifying rights was in vogue, and was denied on the ground that the right upon which the application was based had been exhausted, a certificate will not now be issued, in view of the discontinuance of the practice, notwithstanding it is

now held that the right in question has not been exhausted. 33-647

654. The fact that a certificate has been outstanding 25 years, during which time it has never been located or presented for recertification, is not sufficient ground for the presumption that the same has been lost or destroyed to justify the allowance of an application for additional entry based upon said right. 32-246

655. Where entry under a certificate was commuted prior to the act of June 5, 1900, the claimant under said certificate is entitled to recertification of said right, which he may again locate as though the former entry had not been made. 32-586

656. Upon the location of any portion of a certificate notation to that effect should be made upon the original certificate, and certificates thus located in part should not be thereafter returned to those entitled to the unused portion, but the owners, if they so desire, may secure, in accordance with the law, certified copies of such certificates with the memoranda entered thereon, and in this manner obtain evidence of the outstanding portion of the rights involved. 39-133

657. An application to locate a soldiers' additional right by one claiming to be assignee thereof will not be allowed in the face of a certificate covering the same right known by the Land Department to be in existence and held and claimed adversely to the applicant; nor may the holder of such certificate be required by the Land Department to show how he came into possession of and by what authority he is claiming the same or to defend his title thereto, until such time as he may apply to locate the right. 40-52

658. The issuance of a certificate of soldiers' additional right will not prevent the sale of the right upon satisfactory showing of the loss or destruction of the certificate; and where every reasonable means to prove nonexistence of the certificate has been exhausted, sufficient to show that it in all probability has been lost or destroyed, one holding under valid assignments from the only persons to whom such previous ownership has been traced, may be recognized as entitled to the right. 40-33

(f) Assignment; Powers of Attorney.

659. The right is personal and nonassignable. 4-323; 7-565; 8-608; 9-195; 13-275; 14-205; 15-114; 16-484

660. Circular of May 8, 1901, relative to assignments. 30-604

661. The regulation requiring assignment to be acknowledged, is a mere rule of evidence, and not a rule of law fixing what acts are essential to a valid assignment. 31-112

662. The right to make entry is personal, and can only be exercised in behalf and for the benefit of the soldier. 2-235; 19-547

663. Right is not assignable, and can only be exercised by the soldier, or, in case of his death, by his widow if unmarried, or, if she be dead or married, by the guardian of his minor children. 10-354

664. One who admits the "transfer of his right for a valuable consideration" can not make entry in his own person. 19-223

665. A transferee claiming under a certification of the right has no greater right than the entryman. 7-236, 287

666. A transferee in good faith under an invalid additional entry may be given a preferred right to secure title in his own name under the homestead law if qualified. 9-195

667. Location under a certificate obtained through a transfer of the soldier's right, at a time when such action was held invalid by the department, will not preclude the perfection of an additional entry subsequently made by the soldier and transferred to purchasers in good faith. 19-465

668. The department will not undertake to determine rights claimed under an alleged assignment, in the absence of an application for exercise of the right. 29-273; 30-39

669. In order to charge the Land Department with notice of his claim, an assignee of an additional right must assert the same by application to locate or in some other proper manner; and the fact that such claim may be disclosed by examination of the record of a closed case, is not sufficient to charge the Land Department with notice thereof. 38-442

670. The rule that the department will not undertake to determine rights claimed under an alleged assignment in the absence of an application for exercise of the right, will not prevent a determination of the respective rights of two persons claiming as assignees of the same right, upon the application of either to exercise it.

33-647

671. On application by one claiming as assignee, satisfactory proof must be furnished as to the identity of the alleged soldier with the person who performed the military service.

28-220

672. On application of an assignee to make entry, the evidence required to establish identity of the soldier, and the assignment of his claim, should not be of such character as to unreasonably restrict the exercise of the right by the assignee.

28-216

673. Where a party sells his right and executes and delivers an absolute assignment therefor, he has no right, by reason of the default of the purchaser to pay the price agreed upon, which he can enforce against an innocent purchaser who purchased the right upon the faith of such assignment.

31-101

674. Right may be divided on the basis of legal subdivisions and assigned to different purchasers, each of whom will take the right to the extent of his purchase.

29-643

675. A *bona fide* assignee may assign the right in amounts differing from the quantity of land in legal subdivisions.

32-203

676. The assignee may locate the right without reference to the quantity of land he may own or claim under the public-land laws.

32-418

677. One entitled to make entry under section 2306 may assign his right in such amounts as he deems proper, and each assignee of a fractional portion is entitled to locate the same regardless of the number of assignments made by the original owner or the amount of the right still retained by him.

32-644

678. One claiming to be assignee of the residue of an additional right located in part under a prior assignment, must show that the original assignment was not of the whole right, but only of the area

actually located under such assignment, leaving a residue of right not exhausted; and to determine the extent of the original assignment the Land Department may require production of the originals or copies of the instruments evidencing such transaction.

33-242

679. The assignee of two or more rights may locate them as one right upon the same tract of land, provided they equal in the aggregate the amount of land so located upon.

33-225

680. Where a successful contestant applies to locate separate rights on the different legal subdivisions constituting the contested entry, such applications may be treated as one application for the entire body of land.

36-499

681. The Land Department can not deal with or recognize the assignment of an undivided interest in a right to make additional entry made by one of several heirs of the soldier jointly entitled to such right.

33-245

682. The limitation in the last proviso to section 1, act of May 14, 1898, relating to entries in Alaska, "that no homestead shall exceed 80 acres in extent," applies to the acreage that may be included in a single entry, and does not limit the number of entries that may be made by an assignee of several additional rights.

31-441

683. The assignment of an additional right by the personal representative of the soldier will not be recognized unless it be shown that there is neither widow nor minor orphan child of the soldier capable of exercising such right under section 2307, R. S.

33-434

684. Where a soldier entitled to an additional right disappeared from his place of residence and has been continuously absent, without having been heard from, for a period of seven years, it will be presumed that he is dead, and an assignment of the additional right by his heirs will be recognized, upon proof that there has been no administration of his estate.

40-72

685. As between one applying to locate a right based upon regular assignment thereof by the widow, and one claiming under an alleged sale by the soldier during his lifetime, conditioned upon certification or approval of the right by the

Land Department, though the practice of certifying such rights had theretofore been discontinued, the additional privilege will be awarded the former. 33-647

686. Where one claiming as assignee is advised by the Land Department that his claim will be recognized and location of the right allowed upon the evidence of ownership then on file, the subsequent allowance of a location based upon the same right, by another not claiming in privity, in the face of such assurance and without notice to claimant, will not prevent the department from recognizing the right of claimant to make location under the right. 39-211

687. Where an assignment of a soldiers' additional right expressly limits location of the right upon a certain designated tract of public land, such assignment is special and does not give the assignee the right to locate other public land than the tract so designated; and where, under an erroneous ruling of the Land Department then in force, he is denied the right to enter the land so designated and acquiesces in such action, and the land passes from the jurisdiction of the Land Department, neither he nor anyone claiming through him by virtue of such assignment has thereafter any right to locate any other tract of public land thereunder. 40-448

688. An attorney acting under a power may delegate his authority directly to a second person, but not indirectly through another. 2-31

689. A second attorney of record can not utilize the proof filed by the first. 2-31

690. Right is assignable, and where transferred by a power of attorney to make entry in the name of the soldier, coupled with the right to receive patent, the death of the soldier does not revoke the power so conferred, and an entry thereafter made in conformity therewith is valid. 28-209

691. Where an attorney through fraud obtained a power to sell the right, the certificate and location made thereunder will be canceled and a new certificate issued to the soldier. 3-39

692. Where a power coupled with an interest was executed by the soldier and his wife, and delivered to A as attorney,

and the soldier died before certification of his right, on a new application by the widow, with power of attorney to B as her attorney, it is held that A is entitled to possession of the certificate. 2-30

693. Where the owner of a right executes a power to another to sell any lands he may then own or thereafter acquire under said right, and delivers with it a blank application to enter, signed by himself, having reference to no particular lands, but to be filled in as the holder of the power may elect, he thereby sells and assigns and vests in the grantee all his rights with full ownership thereof. 30-486

694. A mere power to locate and sell the land does not invest the attorney in fact with any right except as agent for his principal, and death of the soldier prior to location of the right under such powers constitutes a revocation thereof and the right remains an asset of his estate; where, however, the soldier disclaims all right to, or interest in the proceeds of the sale under the power, in consideration of a cash payment, he thereby divests himself of all his right, title, and interest and vests the same in his assignee with power to sell and assign the right. 37-116

695. Where a soldier entitled to an additional right executed a double power of attorney, to locate and sell the right, at a time when the assignability of such rights was not recognized by the Land Department, and subsequently himself exercised the right, he thereby exhausted the same, and the Land Department has no power to permit further entry based upon such right by one claiming under the double power of attorney. 38-375

696. When the Land Department, for administrative convenience, took action amounting to a recognition of double powers of attorney as equitable assignments of soldiers' additional rights, it did not thereby undertake, and is not bound, to search its past and closed records to ascertain who may be entitled to claim as equitable assignees by reason of powers latent in the records disposed of and closed, and can not be charged with notice of such claims. 38-375

697. Where a soldier entitled to an additional right executed a power to locate the

same, at a time when the assignability of such rights was not recognized, and no claim under the power was asserted, by application or other proper manner, within a reasonable time after the Land Department took action amounting to a recognition of such powers as equitable assignments, and the soldier subsequently executed an assignment of the right to another, under which entry was allowed, the Land Department is without authority to permit a further entry upon the same right, by one claiming under the power, notwithstanding the existence of the power might have been disclosed to the Land Department, prior to the allowance of entry under the subsequent assignment, by examination of its closed records in another case. 38-445

(g) Widow; Minor Children; Estate.

698. The right accorded the minor child of the soldier must be exercised during minority. 7-547; 10-424; 31-256

699. If the heir of a deceased soldier attain his majority prior to completion of his entry, he must thereafter act in person or through a duly authorized agent in all matters pertaining thereto. 10-424

700. A certificate of right issued during minority of the child does not operate to extend the time within which entry may be made thereunder. 7-547

701. Entry for minor heirs allowed to stand though the application did not contain the names of all the minors. 5-222

702. Right to make additional entry accorded the minor though the soldier's entry had been canceled for abandonment. 3-395

703. Where the minor makes entry under section 2307 in his own name, by a duly appointed guardian, and perfects title thereto, he thereby exhausts his right under the homestead law. 35-520

704. Where a widow applies and dies before issue of the certificate, leaving children of the soldier, her right is extinguished notwithstanding any power of attorney she may have given, coupled with an interest or otherwise. 2-241

705. Widow not entitled to additional entry, if the soldier, at the time of his death, had the right to make an original

entry of and perfect title to the full quantity of 160 acres. 29-536

706. The wife of an insane soldier, who makes entry, as head of a family, for less than 160 acres is not, upon death of the soldier, entitled, as his widow, to an additional right based upon such entry. 31-19

707. If a soldier fails to exercise his additional right during his lifetime, and leaves no widow or minor children, said right remains an asset of his estate, subject to control of his heirs; and a sale and assignment of the right by such heirs can in no wise be affected by the action of an administrator of the soldier's estate subsequently appointed. 32-295

708. The right of additional entry, if not exercised during the lifetime of the soldier, becomes an asset of his estate, if there be no widow or minor orphan children. 29-658; 31-256

709. The right of additional entry is not a life interest merely, but is part of the soldier's estate and as such may be devised by him, subject to appropriation by the widow or minor orphan children, as provided by the statute; and if not so appropriated, the right vests absolutely in the devisee. 35-164

710. The right of additional entry is a property right, and if not exercised by the soldier during his lifetime, nor by his widow or the guardian of his minor children after his death, remains an asset of his estate. 33-245

711. The widow of a soldier who made entry in her own right, prior to the adoption of the Revised Statutes, for less than 160 acres, is entitled to an additional homestead right, and if she fails to exercise such right it becomes upon her death an asset of her estate. 31-443; 32-14

712. The right granted to the widow by section 2307, if not exercised during widowhood, can not be asserted by her during coverture, in case she remarries. 32-14

713. The right conferred by section 2307 upon the widow of a soldier who made homestead entry for less than 160 acres, is lost to the widow if not appropriated during widowhood; and after remarriage, the widow's only interest in such right, if any, is as heir of the soldier. 39-103

714. The right accruing to the widow under sections 2306 and 2307, by reason of an entry made by herself, is a property right vested in her, and is not forfeited by remarriage or death; but in case of remarriage is held in abeyance during coverture, and in event of her death remains an asset of her estate. 34-341

714½. Where the widow of a soldier made homestead entry in her own right for less than 160 acres and died prior to enactment of the Revised Statutes, the right of additional entry authorized by sections 2306 and 2307 became, upon such enactment, an asset of her estate subject to assignment by her heirs, or to distribution, as other personal property. 39-442

715. The right accruing to the widow under sections 2306 and 2307, based upon an entry made by herself, is not forfeited by remarriage, but merely held in abeyance during coverture, and upon removal of such disability may be exercised or disposed of by her as though she had remained the soldier's widow. 34-342

716. The widow of a soldier who made entry in her own right for less than 160 acres and remarried prior to enactment of the Revised Statutes and again became a widow subsequent to the adoption of such statutes, is not entitled to an additional entry under section 2307, R. S. 37-475

717. Where the widow made entry for less than 160 acres and remarried prior to enactment of the Revised Statutes and remained a married woman at that date and until her death, she was never in her lifetime entitled to make an additional entry under section 2307, and no such right, therefore, exists in her estate after her death. 36-311

718. In case a widow entitled to make entry under sections 2306 and 2307, by virtue of an entry made by herself, remarries, without having exercised or disposed of such right, it can not be asserted during coverture; nor can the fact that the only child of the soldier joined the widow in an assignment of such right in any wise affect the situation, in view of the fact that the right is based upon an entry made by the widow and not by the soldier. 34-345

719. Upon the death of a soldier entitled to an additional entry, leaving a widow and minor children, the additional right, under section 2307, R. S., passes to the widow; but if she remarries without exercising the right, it goes to the minor children, without liability to divestiture in event the widow again become sole. 37-194

720. Where a soldier dies without having exercised or disposed of his right, his widow is, in the first instance, entitled thereto, but if she remarries or die without having exercised or disposed of the right, his minor orphan children become entitled thereto, and if not exercised or disposed of by them, through a guardian, during their minority, the right remains an asset of the soldier's estate. 34-333

721. In case a soldier entitled to an additional right dies without exercising it, leaving a widow, his sole heir, and she dies without appropriating the right, it becomes an asset of her estate, by virtue of her inheritance of the soldier's estate, and descends to her heirs. 39-440

722. The Land Department has no authority to coerce one of several heirs to a soldiers' additional right to assign his interest therein, or to partition in severalty a right held by several heirs jointly. 38-332

723. A judicial proceeding for the purpose of fixing ownership and decreeing sale of the additional right of a soldier who died intestate must be instituted in the probate court having jurisdiction over the situs of the right, which in such case is the domicile of the soldier at the time of his death, and so remains as long as the probate court has power of administration thereover, and sale of the right under decree of a court not having such jurisdiction is ineffective to convey title thereto. 38-332

724. The additional right of a deceased soldier is subject to distribution as part of his personal estate, and assignment thereof should be made by his executor, administrator, or devisee, but in case he dies intestate an assignment by his heirs will be recognized by the Land Department where it is shown by certificate of the proper probate court that there has been no administration of his estate and also by like

certificate or other satisfactory evidence that the heirs making the assignment are the sole heirs of the soldier. 38-234

(h) Approximation.

725. Circular of August 7, 1903, relative to application of rule of approximation to soldiers' additional entries. 32-206

726. One application of the rule allowed to each right of additional entry, and where the right is divided, the rule may be applied only in the location of one portion thereof. 32-644; 34-441

727. Where a portion of a right is located for a tract embracing merely a fraction of an acre excess, such small excess will not, under the rule *de minimis non curat lex*, be regarded as preventing the holder of the remainder of the right, in making location thereof, from applying the rule of approximation. 34-441

728. The rule of approximation must be strictly observed in the location of soldiers' additional rights, and it will not be extended by permitting application of the principle *de minimis non curat lex* to bring a claim with the rule. 39-550

729. Not applicable to locations in Alaska. 28-149

730. The holder of a number of fractional portions of different rights may combine and locate them upon one body of land of their aggregate quantity; but the rule of approximation can not be invoked in such case unless the excess area of the combined rights be less than the deficiency would be if the smallest legal subdivision of the location were eliminated and unless all other prerequisites to the application of the rule exist as to each separate fractional portion of right involved in the location. (See 36-417.) 36-305

731. In applying the rule of approximation in cases where the assignee of two or more fractional portions of different rights combines and applies to locate them on one body of land, the rights will be severally considered, and where the excess amount applied for is less than the average of the rights sought to be used, the entry may be allowed. 36-417

732. The rule of approximation is a purely administrative equitable rule, and can not be insisted upon as an absolute right; and where the privilege is abused to accomplish an evasion of positive law, the Land Department has full power to change the rule to prevent the abuse; and entries procured through such abuse are not entitled to equitable consideration on the ground that they were made under authorized existing practice. 36-543

733. While the rule of approximation is permitted in the location of combinations of rights, it has never been held by the department that such rights might be so combined and located as by aid of the rule to acquire areas largely in excess of the aggregate acreage of the combined rights; and the allowance of entry by the Commissioner of the General Land Office, on such a location, prior to the decision of the department that the rule could be invoked in the location of combinations only where the excess is less than the average of the combined rights, conferred no such vested right upon the entryman as would entitle him to equitable consideration on the ground that the entry was made under authorized existing practice. 36-530

734. The law does not contemplate, and the department has never authorized or sanctioned, the location of combinations of fractional portions of different rights in such manner that by aid of the rule of approximation an amount of land only a trifle less than double the area of the combined rights might thereby be taken; and locations so made are therefore not entitled to equitable consideration on the claim that they were made in faith of departmental construction of the law. 37-28

735. Can not be allowed for a tract the area of which, when added to the land covered by the original, exceeds 160 acres by a greater amount than the area required to make up the deficiency. 13-275

(i) Act March 3, 1893.

736. A purchaser in good faith of a certificate of right, who locates the same, though invalid for such purpose, may perfect title under the act of March 3, 1893, on payment of the Government price. 16-294, 319

737. The right to purchase conferred by the act extends only to entries made or initiated upon a certificate of additional right. 17-512

738. The act provides for a class of claims not confirmed by section 7, act of March 3, 1891. 17-168

739. The right of purchase can not be exercised in the absence of proof that the additional entry was based on a certificate of right that has been found erroneous or invalid. 17-60

740. The right to perfect title under the act on payment of the Government price, may be accorded a transferee holding under a certified right located after the death of the soldier. 18-77

741. The acts of March 3, 1893, and August 18, 1894, do not contemplate the perfection of an entry made in person by the soldier and without a certificate of right. 20-516

742. The act of March 3, 1893, is not applicable to a case wherein the certificate is held under a fraudulent power of attorney, and where an adverse claim thereto is asserted, and exercised, by the soldier in person prior to the location under said certificate. 20-419

743. The act of March 3, 1893, was for protection only of persons holding under certificates issued in accordance with the regulations of May 17, 1877. 23-495

(j) Act August 18, 1894.

744. Circular of October 16, 1894. 19-302

745. The practice of recertifying rights, and issuing substitutes for lost or destroyed certificates, discontinued, and the circular of October 16, 1894, in so far as it relates to certification, withdrawn and vacated. 38-517

746. Applies only to certificates in existence at the date of its passage. 33-112

747. Is limited to certificates issued prior to its passage, and to entries made with certificates so issued. 27-565

748. The act can not be invoked to defeat rights which accrued prior to its passage. 19-160

749. On application for the recertification of a right, for the benefit of an assignee, the applicant will be required to

establish the fact that he is a *bona fide* purchaser for value of said right. 26-555

750. Whether a deed conveying land entered on a certificate of right is an absolute conveyance, or a mortgage, it will be treated as giving the grantee the status of an assignee entitled under the act to patent in his own name, leaving to the courts the determination of any right that may be asserted by parties claiming that said conveyance was in fact intended as a mortgage. 27-527

751. The sale of an additional right, and attempted transfer thereof by power of attorney to locate the certificate of said right, is made good in the hands of the purchaser by the act, and such purchaser is entitled to the certificate. 19-268

752. A duplicate certificate regularly issued, which does not indicate that it is a duplicate, purchased in good faith, before the right had been exhausted, and in the hands of a *bona fide* purchaser, unsatisfied, at the time of the passage of the act, was validated and made a certified right, which could thereafter be lawfully transferred, irrespective of the transferee's knowledge that the right had, prior to his purchase of the duplicate, been exercised through the use of the original certificate. 31-216

753. Recertification may be allowed in the name of a transferee where the original certificate has been canceled and appears to have been held at such time by said transferee, who was entitled as a *bona fide* purchaser to the benefit of the act. 22-699

754. Certificates regularly issued, and located by *bona fide* purchasers, but thereafter canceled for illegality, and remaining unsatisfied at the passage of the act, are validated, and may be reissued for the benefit of a *bona fide* purchaser. (See 28-204.) 24-35

755. Under the act an entry made on a certificate of right is valid, and must be approved, where the land is held by a *bona fide* purchaser, though the issuance of the certificate may have been secured through fraud; and the patent in such case should issue in the name of the assignee. 24-291

756. Under the act a duplicate certificate may issue to the purchaser, in the

name of the soldier, on showing the loss of the original and that it has not been located. 23-123

757. Where a certificate has been located by an assignee, and the location canceled in part, and patent issued for the remainder, the assignee is entitled to recertification for the number of acres not secured under the original certificate. 26-192

758. The act does not extend to an entry secured in fraud of the soldier's right. 20-419

759. The act does not defeat the right of a successful contestant under a decision that has become final prior to its passage. 20-2

760. The act does not protect the purchaser where the right has been satisfied by the prior issuance of a certificate. (See 21-404.) 20-272

761. An application for certification, made on behalf of a purchaser, can not be allowed where the right has been exercised, through an entry made in the name of the soldier's widow, such entry being allowed without notice of the prior sale of the right. 25-119

762. The right of an alleged assignee to certification can not be recognized where the department, without notice of the assignment, has allowed the soldier to make entry in person. 25-205; 27-565

763. It was the intention of the act to validate all outstanding certificates in the hands of *bona fide* holders. 21-404

764. One who buys a certificate without notice of illegality at its inception, or of its invalidity for any other reason, is a *bona fide* purchaser. 21-404

765. An entry made by the purchaser is confirmed by the act. 21-228

766. There is no authority for the insertion of a condition in a certificate requiring settlement and residence by the soldier, where the original entry was abandoned; and in recertifying in the name of a transferee, such condition, contained in the original certificate, should be omitted. 24-502

767. The act does not contemplate the confirmation of entries made on land not subject thereto, and can not be invoked

for the protection of an entry made on lands occupied for trade and business. 23-502

768. The act validated all certificates outstanding at its date and all transfers, past or subsequent, in the hands of innocent purchasers, but does not contemplate the issuance of new certificates, in the name of subsequent assignees, for any remaining portions of rights formerly evidenced by certificates which have been surrendered and canceled as satisfied, which remaining portions can only be allowed as personal rights and without reference to the act. 36-434

769. The fact that a certificate issued in the name of the soldier will not prevent him from selling and divesting himself of the right itself, of which the certificate is merely the evidence; and upon satisfactory showing of the loss or destruction of the certificate, it may be reissued and recertified in the name of the assignee entitled to the right. 34-685

770. An invalid certificate of soldiers' additional right never transferred but destroyed in the hands of the original holder was not validated by the act of August 18, 1894, and the Land Department is without authority to recertify such right. 38-71

XI. Commutation.

See FINAL PROOF, X, 492; INDIAN LANDS, 213, 234-235, 246, 251-253, 332, 370-371, 420, 459, 493; OKLAHOMA LANDS, 4, 11-12, 19, 97-98, 102-103, 112, 123-141, 194, 196, 221-224; RESIDENCE, III.

771. Right is statutory. 6-311

772. Right extends to an entry made under section 2304, R. S. 4-399

773. Commutation is the consummation of the homestead right and precludes its further exercise. 13-439

774. Is a consummation of the homestead entry. 4-347, 441; 8-566

775. Is the consummation of the homestead, and not the exercise of the preemptive right. 4-441; 6-288, 407

776. Right exhausted where title to a portion of the land is consummated by commutation. 8-53; 11-364

777. One who submits proof for part of the land covered by his original entry ex-

hausts his right thereunder, but may apply for additional entry under section 6, act of March 2, 1889. 11-364

778. Permitted where final proof fails to show compliance with the law in the matter of residence. (See 13-42.) 8-45

779. The fact that lands may be chiefly valuable for timber does not exclude them from settlement and entry under the homestead law, but where the entryman in such case submits commutation proof and pays a price to cut short the period of residence, he invites scrutiny and challenges judgment as to the good faith of his entry. 35-561

780. A homestead entry made with no intention of establishing a permanent home on the land, but merely with a view to submitting a showing sufficient to support commutation, must be canceled, notwithstanding the proof offered shows full technical compliance with respect to inhabitancy of the land for the period ordinarily required in commutation cases. 37-683

781. The purpose of the homestead law is the donation of the public lands to actual settlers seeking to establish *bona fide* homes thereon, and the provision respecting commutation in no wise changes that purpose but merely affords a means of commuting further residence to cash in meritorious cases lawfully initiated and prosecuted to the date of commutation. 37-683

782. By commutation the original is merged into the cash entry, and cancellation of the latter involves cancellation of the former. 4-237;

6-8, 107; 8-651; 12-243

783. Homestead right lost through failure of commutation entry. 5-392

784. The right depends upon prior compliance with law. If the cash entry fails, the original entry fails therewith. 4-237; 7-87; 9-150; 11-235, 312

785. The right depends upon compliance with law to date of commutation. 29-260

786. If the final proof shows the entryman's failure to comply with law in the matter of residence, and that he is for that reason not entitled to perfect his entry, he is also debarred from exercising the right of commutation. 8-566;

9-151; 13-42

787. Authorized on payment of the purchase price and due showing of residence, cultivation, and improvement. 7-231

788. An adjoining farm entry may be commuted on showing due compliance with law. 13-713

789. Regulations under preemption law govern as to residence. 4-287, 347

790. Six months' residence properly required as an assurance of good faith. 4-287, 347, 384

791. Six months' residence after entry not essential. 4-418

792. Right not defeated by absence covering considerable period when followed by continuous inhabitancy for the time required. 6-324

793. Right not defeated by failure to establish residence within the required period in the absence of an intervening adverse claim. 1-39; 5-675

794. In computing the period of compliance with law by a homesteader who commutes credit can not be allowed for residence and cultivation when the land was not open to settlement. 21-106

795. A commuting homesteader who secured his right by contesting the prior entry of another allowed credit for residence before the contested entry was canceled. 4-287

796. Under act of May 14, 1880, residence may be computed from date of settlement. 5-94

797. Under section 2301, R. S., as amended by section 6, act of March 3, 1891, requires 14 months' residence from the date of entry, and not from settlement. 16-285; 18-150; 21-115

798. An entry made after the act of March 3, 1891, though based on a soldier's declaratory statement filed prior to said act, can not be commuted without 14 months' residence and cultivation from date of the entry. 22-488

799. The act of June 16, 1898, specifically provides that "no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements," and credit for military service, as provided for by said act, can not be allowed as a substitute for such period of residence. 35-553

800. Directions given for protection of rights under commuted entries in which credit may have been allowed for military service in lieu of the one-year period of residence required by the act of June 16, 1898, under the then existing practice of the General Land Office. 35-553

801. An entry made since the amendment of section 2301 can not be commuted without 14 months' residence and cultivation from date of entry, even though settlement was made prior to the amendatory act. 18-437; 22-194

802. The board of equitable adjudication can not waive the requirement of the statute that permits commutation only after 14 months' residence and cultivation from date of entry, and confirm an entry allowed in contravention of said requirement. (See 21-200.) 20-361

803. Allowed after the amendment of section 2301 on less than 14 months' residence from the date of the original entry, may be equitably confirmed, where the term of residence, if computed from settlement, is in compliance with said amended section, and, after allowance of said commuted entry, the land was sold to a purchaser in good faith. 21-200, 203, 491

804. Where commutation is allowed on a period of residence less than required by law, and the entryman thereafter in good faith sells one of the tracts covered by his entry, he may furnish supplemental proof showing subsequent residence on the unsold portion, and his entry be submitted for equitable action. 21-484

805. An entry can not be equitably confirmed for the benefit of transferees where commutation was made before the expiration of 14 months from date of settlement. 22-194

806. Circular of July 9, 1896, as to commutation under act of June 3, 1896. 26-544

807. Under act of June 3, 1896, an entry, suspended on account of having been made prior to 14 months' residence after date of the original entry, is confirmed, where it appears that the entryman in good faith actually resided 6 months on the land prior to commutation, and no adverse claim, originating prior to final proof, exists. 22-717; 26-561

808. An order directing cancellation of a prematurely commuted entry will not defeat action under the confirmatory provisions of the act of June 3, 1896, if such order has not become final. 24-351

809. Commuted, may be referred to the board of equitable adjudication, in the absence of protest, where residence is not commenced within 6 months. 7-488; 8-566; 10-88; 21-342

810. Commuted, allowed since the McKay decision, where residence was not established within 6 months from date of original entry, may be submitted to board of equitable adjudication without calling for explanation from entryman. 8-566

811. Until all preliminary acts required by law are performed no right is acquired as against the Government. 6-255

812. Should not be allowed in the presence of an adverse claim pending on appeal and involving the validity of the original entry. 17-592

813. Right not defeated where claimant, through misinformation received at the local office, submitted ordinary homestead proof. 6-573

814. An entryman who has filed his declaration of intention to become a citizen is qualified to commute. 7-368

815. A widow by commuting her deceased husband's entry secures the equitable title to the land. 10-209

816. After submission of satisfactory proof and tender of payment the entryman is under no obligation to remain on the land or show further compliance with law. 10-555

817. Entryman permitted to commute, in the absence of bad faith, after the expiration of the statutory life of the original entry and failure to submit satisfactory proof thereunder. (See 9-150.) 7-476

818. Instructions of March 21, 1901, under act of January 26, 1901, relative to commutation. 30-540

819. The first proviso to the act of May 17, 1900, does not extend the commutation provisions of section 2301 to the lands within the purview of said act, it merely declaring that where such provisions already apply they shall remain in full force and effect. 53-78

820. All persons who have acquired title by commutation, whether under section 2301 or any of the special acts relating to Oklahoma lands, are, if otherwise qualified, entitled to enter a homestead of the Comanche, Kiowa, and Apache lands.

31-46

821. Circular of June 19, 1902, under act of May 22, 1902, with respect to commutation of and second entries.

31-358

822. A second entry made under the act of April 28, 1904, which forbids commutation of entries thereunder, may be perfected under the act of February 8, 1908, which permits commutation.

37-660

823. The Land Department is without power to extend the time for payment of the purchase price upon the commutation of a homestead entry beyond the limit of 10 days after notice provided by the act of March 2, 1907; but where an entryman within the purview of the act of August 19, 1911, relieving certain homesteaders from the necessity of residence and cultivation from the date of said act until April 15, 1912, failed to make payment of the commutation purchase price within 10 days after the notice provided for in the earlier act, he may subsequently be permitted to make such payment, without additional proof, where the entire intervening period between the submission of his commutation proof and the time he actually makes payment is covered by the period of exemption granted by the said act of August 19, 1911.

40-510

XII. Cultivation.

See 1156-1158 HEREOF.

824. Cultivation is essential to compliance with the law.

29-561

825. A mere pretense of cultivation does not satisfy the law.

36-255

826. Good faith in attempting to cultivate is entitled to consideration.

12-67

827. Continued drought excuses failure to cultivate.

2-149

828. The law requires cultivation, and land which is so mountainous, rough, broken, heavily timbered, and of such poor quality that it is impossible of cultivation, is not subject to homestead entry.

40-342

829. The law insists on cultivation for 5 years, even during periods when absence is excusable; an entryman earning \$1.50 to \$1.75 per day at his trade has no excuse for failure to cultivate.

2-73

830. The occupancy and use of land for lumbering purposes does not constitute the improvement contemplated by law.

3-63

831. Commutation will not be allowed in the absence of *bona fide* cultivation and residence.

3-63

832. The heirs of a deceased homesteader sufficiently comply with the law if they cultivate during the proper season each year.

33-45

833. Both residence and cultivation required except in cases of adjoining farm.

3-141

834. In grazing countries use of the land for that purpose, coupled with residence, held to be in compliance with homestead laws.

3-140

835. In grazing countries the use of land for that purpose, where suitable for that purpose only, is equivalent to cultivation; and where rented to another and used by him for such purpose, such use constitutes compliance with law on the part of the entryman in the matter of cultivation.

33-41

836. The cultivation required by section 2301, R. S., is satisfied by clearing the land for planting when sufficient time has not elapsed for further acts in that direction.

3-49

837. Boxing and chipping pine trees for turpentine is not cultivation.

5-389;

36-302

838. The use of land for the raising of hogs is an agricultural use, and where better adapted to that use than tillage of the soil, meets the requirements of the homestead law with respect to cultivation.

38-33

XIII. Act of May 14, 1880.

See SETTLEMENT, II.

839. Settlement right of entryman protected by act of May 14, 1880.

1-83

840. Right enlarged by the act of May 14, 1880.

6-134; 8-286

841. Section 2291, R. S., and the act of May 14, 1880, should be construed together. 8-286

842. Settlement is only protected as against other and later settlers for the period of 3 months. 5-624

6-306; 7-537

843. A settler who fails to make application to enter within the period provided in the act is not thereafter protected as against another who has complied with the law. 12-629

845. Time within which to enter does not run against a settler under the act during the pendency of an erroneous application theretofore filed by him for the land in question. 12-631

846. The act does not apply to a settlement upon lands not subject to entry. 3-176

847. The third section of the act is not to be construed as destroying any vested right theretofore acquired. 3-130

848. General requirements of the law not waived by the act. 5-172

849. In the absence of an intervening claim the rights of a settler under the act relate back to date of settlement, even though entry is not made within the statutory period. 6-653

850. Of settler relates back under act to date of settlement, to the exclusion of intervening claim. 6-257, 653;

7-537; 8-448; 40-355

851. Not allowed under section 3 until the record is cleared of adverse claims. 1-449

852. Right was enlarged by the act and protection given to settlement before survey, so that if a settler dies before survey the right of entry inures to his devisee. 6-134; 8-286

853. The right acquired under the act by a settler who dies prior to survey may be exercised by his devisee. 9-452

854. A settler under the act who has complied with law for the requisite period at the date of application to enter has a vested and devisable interest. 23-188

855. The period within which the right of entry is protected under the act begins to run from the date the land is declared open to entry in the published notice of filing of the township plat. 8-207

XIV. Act of June 15, 1880.

856. The right to purchase under said act is not personal, and the words of the law that "persons who have heretofore under any of the homestead laws entered lands properly subject to such entry" include all persons who, by original application or operation of law, have succeeded to the right to make final proof and payment of fees and take patent. 1-50

857. Land entered prior to said act may be purchased on payment of Government price if free from adverse claims. 8-75

858. Purchase should be allowed in the absence of intervening adverse claims if the land was subject to the original entry. 8-403

859. No restrictions on purchase except those applicable to ordinary cash entry. 5-535

860. Purchase is not a consummation of the original entry relating back to the date of such entry, but a private entry operative from the date thereof. 8-532

861. Purchase under this act prior to the act of March 2, 1889, defeats the right of the entryman to make second entry under the latter act. 13-257; 14-616

862. Purchase under the act held to be a "compliance" with the homestead laws. 9-604; 25-327

863. Section 2 of said act is a part of the homestead laws, and provides a method of consummating title under that class of homestead entries which comes within its provisions. The privilege thus accorded, and the title obtained thereunder, rest upon and have their inception in the original homestead entry, which is merged in the higher and perfected title obtained by compliance with the provisions of said section. 28-204

864. Only land subject to entry may be purchased. 4-171

865. The right of purchase under section 2 extends only to entries of land "properly subject to such entry," and does not include an entry of land previously withdrawn in aid of a railroad grant. 14-103

866. Right of purchase extends only to entries made prior to the act. 8-329; 25-453

867. An attempted transfer subsequent to June 15, 1880, can not become effective, the act having relation to past transactions only. 1-75; 2-176; 5-11

868. Right of purchase defined. 4-465

869. Purchase may be made by any person who through entry or by operation of law has succeeded to the right to make final proof. 1-50, 56

870. Widow of entryman may purchase. 2-83; 3-490; 5-333

871. The legal successor entitled to purchase. 2-82

872. Widow instead of administrator may purchase. 1-35; 3-465

873. Heirs may acquire title in either of the several ways prescribed in the homestead laws, or may purchase under section 2, though aliens. 2-98

874. Widow may purchase though entry has been canceled for failure to make proof within the statutory period. 3-490; 5-529; 9-605

875. Right of widow or heirs defeated by transfer. 1-35

876. The deserted wife or minor child of the entryman may purchase as his agent; entry must be referred to board of equitable adjudication. 2-81

877. As the entryman in this case, if living, might have purchased at date of the application (after contest, but before hearing), this right descended to his heirs. 2-99, 523

878. A devisee has the right of purchase as the transferee by will; applied to case where entryman's widow had deserted him several years before his death and he had devised land to his daughter, who afterwards resided on and improved it as head of a family. 2-82

879. Right of purchase recognized in case of entry made by an alien who subsequently declared his intention to become a citizen. 4-564

880. Entry of alien may be purchased by widow. 1-55

881. Alien heirs may purchase under section 2. 1-98; 2-98

882. Exercise of the right of purchase as to part of the land exhausts the privilege conferred by said act. 21-483

883. Right of purchase can not be exercised by one who has voluntarily relinquished the original entry. 8-606; 10-588; 22-81

884. The voluntary relinquishment of an adjoining farm homestead is a bar to subsequent purchase under said act. 21-26

885. Cash entry made by one who had previously executed a relinquishment of the original entry operates as an appropriation of the land, it appearing that said relinquishment was the result of a mistake, and that no rights are claimed thereunder. 16-558

886. Alienation of land no bar to purchase. 1-74

887. A cash entry under section 2, allowed under the rule that "alienation of the land is no bar to the original party purchasing under said act," will not be canceled where the transfer of the land was prior to the change of said rule. 21-38

888. The right of purchase under section 2, on behalf of an entryman who after the passage of said act and prior to application for exercise of said right, had sold the land to another, can not be recognized. 26-239

889. An entryman who has sold his interest in the land is not entitled to purchase. 2-125; 8-330; 9-311; 12-393; 13-545

890. An entry fraudulent and void at inception is not subject to purchase by a transferee. 6-457

891. Purchase may not be made by transferee when he is not the real party in interest. 6-94

892. Transferee claiming under a purchase made during the pendency of a contest takes nothing thereby. 6-641

893. Transferee by *bona fide* instrument of the entryman's improvements and possessory right can purchase under said act. 1-53

894. An executed or present transfer and not an agreement to transfer in future (after entry), is meant by the act. 2-53

895. The right of purchase extends to a *bona fide* transferee claiming under an additional entry, although the original was canceled for failure to submit proof within the statutory period. 7-301

896. Attempted transfer prior to act carries right of purchase though the deed was not made till after the passage of the act.

1-72

897. Possession of duplicate receipt not such evidence of transfer as to authorize purchase; transfer must be in writing to carry right of purchase.

1-67

898. Purchaser should produce the duplicate receipt or account for its loss, showing that no assignment thereof has been made.

7-283

899. The entryman can purchase only such part of the homestead as he has not attempted to transfer; if he has attempted to transfer, only the transferee has the right of purchasing, in whole or in part, unless there be an agreement to the contrary.

2-176

900. Right of purchase can not be set up by one who claims no interest through the original entryman, for the sole purpose of defeating a railroad grant.

15-81

901. The right of purchase under section 2 extends to one holding under an attempted sale (by double power of attorney) of a soldiers' additional right, and also having title by judicial decree and intermediate conveyance.

15-136

902. The assignee of an erroneously issued and invalid certificate of soldiers' additional right allowed to purchase the tract already entered by him.

2-238

903. If a single woman make entry and then marry, the husband is not entitled to purchase in his own name in the event of her death. Patent in such case must issue to the heirs.

1-84

904. Entryman can not purchase for protection of transferee.

6-95

905. Register appointed after entry allowed to purchase.

1-73

906. Purchase allowed where final proof failed.

1-75

907. Does not authorize the purchase of land entered by mistake.

5-105

908. May be allowed though the entry is illegal at inception. (See 7-94.)

1-25; 5-115, 118

909. The entryman or transferee can not purchase under an entry depending upon false and fraudulent statements and forged documents, or where the entry was canceled for fraud prior to the act.

7-94, 301

910. A soldiers' additional entry based upon a certificate of right obtained by false statements does not authorize a purchase under said act.

9-195

911. A purchaser of the land covered by an entry made under a power of attorney that is in effect a transfer of the soldiers' additional right, prior to exercise thereof, is not entitled to perfect title under said act. (See 16-484.)

17-512

912. Irregularity or illegality of entry, fraud not appearing, is not a bar to the right.

2-94

913. The right of purchase is not dependent upon compliance with the homestead law.

5-535; 7-283, 344

914. Failure to comply with law in the matters of settlement and residence does not affect the right of purchase.

5-333;

11-462

915. Purchase under the act not equivalent to residence and cultivation.

5-10

916. Does not authorize a purchase under a homestead entry made by an Indian who is not a citizen.

8-55

917. Purchase made under existing rulings and direction of the commissioner by a transferee holding under certificate of additional right issued to a member of the Missouri Home Guard not disturbed.

8-235

918. There is no right of purchase in one to whom the lands have already been patented under the general homestead law, notwithstanding there may be doubt about the validity of the title to them.

2-114

919. Application under, may be entertained for land patented on entry within the terms of the act on surrender of the patent.

5-301

920. Where one made homestead entry under the general law in 1874 and in good faith a soldier's homestead entry in 1878, and pending contest against the latter made application to purchase; held that, notwithstanding the irregularity, he may purchase.

2-124

921. Cancellation of the original entry no bar to purchase.

1-57, 69, 96;

4-23; 5-333, 529; 8-403; 11-416

922. Purchase authorized even after cancellation of original entry if it does not interfere with the subsequent right of another.

7-281

923. Expiration of the statutory life of an entry or the entryman's noncompliance with law constitutes no bar to the right of purchase. 15-213

924. Cancellation of the original entry and subsequent improvident timber-culture entry of the land by the claimant will not defeat his right of purchase. 12-310

925. An intervening entry canceled on relinquishment, before application to purchase, is no bar thereto. 8-403

926. Right of purchase accorded the first applicant where several entries had been canceled. 1-96

927. An intervening entry made after the act and canceled on relinquishment is no bar to purchase. 8-75

928. The fact that after cancellation of the original entry the land was entered by another will not defeat the right of purchase where such subsequent entry was canceled prior to the application of the purchaser. 7-281

929. The right of purchase does not exist where the entry was canceled and an adverse right intervened prior to passage of the act. 6-409

930. Right of purchase defeated by intervening claim where the applicant fails to appeal in time from the rejection of his application. 11-570

931. Right of homesteader who has abandoned the land to purchase is defeated by the intervening adverse claim of his wife, who has remained on the land and commenced proceedings in her own right to secure the same. 12-320

932. The term "homestead laws" in the proviso to section 2 is employed in a generic sense. 1-69

933. The term "homestead laws" in the proviso to section 2 is employed in a generic sense, and will include and protect an intervening desert-land entry. 20-528

934. An intervening preemption or timber culture claim bars the right of purchase. 1-69;

3-373; 4-466, 493; 7-325; 10-410

935. The preference right of a successful contestant superior to the right of purchase. 7-329, 500; 16-183

936. The right of a railroad company acquired by definite location is not such an intervening adverse claim as will defeat

the right of purchase conferred by said act. 22-264

937. The entryman has right of purchase while his appeal from the commissioner's action is pending before the Secretary prior to the cancellation of his entry. 2-51

938. Right of purchase not defeated by the pendency of proceedings on special agent's report. 7-342

939. Application should not be carried to entry until right of appeal allowed to adverse parties has expired. 4-21

940. During contest the right of purchase exists until final judgment in favor of contestant. 4-21

941. Purchase not allowed pending contest concerning the right of entry. 4-466

942. Initiation of contest against the original entry suspends the right of purchase under section 2. 2-164;

4-580; 5-189, 229, 606; 6-641;

8-463, 579, 595; 9-18; 10-111,

410, 678; 11-261; 13-487

943. An application to purchase made after the initiation of a contest should be suspended until final disposition of the contest. 13-487

944. That the purchase was made during the pendency of a contest is an objection that can only be raised on behalf of contestant. 7-194; 9-390; 10-392; 11-598

945. Purchase made while the right was suspended in favor of a contestant may be held valid if the contestant waives his right. 7-381

946. Suspension of the right of purchase during contest is for the benefit of contestant only. 7-145, 194

947. A purchase should not be allowed pending contest, but if so allowed may stand subject to the right of the contestant. 19-182

948. A subsequent preemption filing by contestant, who is not qualified to exercise the preferred right, will not effect a cancellation of the cash entry and open the land to other applicants. 19-182

949. Purchase pending contest, where the contestant is apparently disqualified to enter, should not be canceled, but suspended and opportunity given the contestant to assert his claim. 7-145

950. A cash entry made subject to the right of a successful contestant who makes

preemption entry may be suspended or relinquished, with the right to apply for repayment. 10-410

951. Purchase pending contest should not be canceled, but suspended, and held subject to the contestant's preference right. 7-194

952. The rule as to purchase pending contest laid down in *Freise v. Hobson* governs in all cases not then finally adjudicated. 6-446; 7-381, 500; 10-678

953. Rights that became vested prior to the decision of *Freise v. Hobson* are not affected by the change of ruling announced therein. 9-75

954. A purchase allowed by final decision prior to the ruling in *Freise v. Hobson* is not affected thereby, nor can the validity of such purchase be questioned collaterally by another applicant for the land. 10-129

955. An entry under said act is not invalid though the entryman may have contracted to sell the land before making the entry. 2-94;

5-535; 7-570; 9-311; 10-129, 392

956. Right of purchase not defeated by the prior execution of a power of attorney authorizing a sale of the land. 10-392

957. A naked power of attorney to sell the land is not evidence of a sale and will not defeat the right of purchase. 9-311

958. Land returned as valuable for coal prior to the act of March 3, 1883, not subject to purchase though the original entry was made before the passage of said act (Alabama lands). 9-178

959. Purchase of land (Alabama) returned as valuable for coal before the act of March 3, 1883, not permissible until after public offering. 7-512; 8-532

960. Application to purchase lands not subject thereto for want of public offering should be suspended pending such offering. 8-532

961. Cash purchase of land previously reported as valuable for coal may be suspended until after public offering and treated as an application to enter if the land is not sold at such offering (Alabama lands). 9-178

962. Section 2 is a part of the homestead system to which the term "homestead

laws" is generally applied in the joint resolution of May 14, 1888. 9-604

963. Construed with the act of May 14, 1880. 4-580

964. Section 2 not repealed by the joint resolution of May 14, 1888. 9-604

965. The allowance of a purchase by direction of the General Land Office will not preclude departmental determination as to its validity. 7-301

966. Discovery of coal on land after entry will not affect rights acquired thereunder. 7-570

967. The proviso in this section was not necessary to protect subsequent entrymen, the intention of Congress, from general considerations, being sufficiently clear without it. 2-165

968. Application to purchase reserves the land. 4-32

969. Right of purchase, until exercised, does not preclude other disposition of the land by Congress. 9-178

970. Right of purchase is a subsisting claim to the land. 5-529

971. Hearing ordered after purchase on the charge that the original entry was fraudulent. 4-578

972. Personal affidavit not required of the original entryman where he applies to purchase and the duplicate receipt is with the record. 11-555

973. The validity of an entry under said act, made through a power of attorney, is not affected by the fact that the requisite affidavit is made by the attorney. 13-183

974. An entry made under power of attorney and canceled for want of a personal affidavit of the entryman must be reinstated and intervening claims excluded. 13-183

975. A purchase allowed on the affidavit of the entryman's attorney will not be disturbed where, after transfer of the land, the entryman refuses to make the affidavit required by the regulations. 9-97;

11-587; 22-469

976. Cash entry made under said act and canceled for failure to furnish the requisite proof will not be reinstated on the application of one who claims as a transferee, but does not trace his title to

the entryman nor occupy the status of an innocent purchaser. 12-469

977. The required affidavit of an applicant to purchase may be made elsewhere than in the land district, for good cause shown, before any qualified officer having a seal. 2-128

978. Application to purchase under section 2 will not be allowed in the absence of an affidavit showing the nonmineral character of the land and that no prosecution or proceeding has been had against the applicant on account of any trespass committed or material taken from any of the public lands subsequent to March 1, 1879. 31-143

XV. Act of March 2, 1889.

- (a) Additional Entry.
- (b) Second Entry.

(a) Additional Entry.

979. Homestead right as enlarged by the act of March 2, 1889. Circular of March 8, 1889. 8-314

980. Circular of July 27, 1907. 36-46

981. The provisions of the Revised Statutes relative to the qualifications of entrymen and the requirements preliminary to entry are not repealed by said act, except as explicitly stated therein. 13-205

982. In determining the acreage that may be taken as an additional homestead entry under said act, the rule of approximation is properly applicable. 20-448

983. Additional, under section 5 calls for a fee of \$10 if the land embraced therein exceeds 80 acres. 13-614

984. Additional, made prior to the passage of the act may stand, though unauthorized when made. 9-543

985. The right to make entry under said act can not be exercised in the presence of an intervening adverse claim arising through negligence of the homesteader to assert his additional right within the statutory period. 19-371

986. Entry of contiguous tract authorized by said act if the original was for less than 160 acres and the entryman still owns and occupies the land covered thereby. 8-428

987. An entry under section 5 should not be allowed where the applicant is not

at such time occupying the land covered by his original entry. 20-55

988. The provisions of the act do not apply where the original entry is made after said act. 15-548; 22-95

989. Entry of contiguous land may be made under section 5 by one who prior to said act had entered less than 160 acres and continues to own and occupy the land so entered. 10-681

990. The right to make, under section 5, of a contiguous tract exists only where the original entry is made prior to the act. 15-221; 16-530; 33-347; 34-537

991. The additional right conferred by section 5 can only be exercised on land contiguous to the original homestead. 21-22; 29-217

992. Additional, under said act allowed to include a tract of adjacent land intended to be covered by the original entry on which patent had issued. 8-500

993. Of contiguous land under section 5 may be based upon a homestead entry made in conformity with legal requirements. 10-78

994. An entry under the act of 1879 is no bar to a subsequent entry under section 5, provided the total area under all entries does not exceed 160 acres. 15-218

995. Only one entry may be made under section 5, but where a second has been allowed the entryman may relinquish and reenter under section 6. 15-365

996. A married woman is not disqualified to make entry under section 5, where prior to said act, and when possessing the necessary qualifications, she made her original entry and submitted proof showing compliance with law. 31-129

997. A widow who perfects title under the entry of her husband is not entitled to an additional entry of contiguous land under section 5. 29-185

998. Right to apply for additional, treated as a preferred right in cases pending at the passage of said act. 8-474; 12-558

999. Additional, may be made under said act where the applicant has exhausted his rights under sections 2289 and 2306, R. S., without securing 160 acres of land. 9-388

1000. The right to make, under section 6, is limited to cases where the orig-

inal entry was made prior to the act, (See 25-113.) 15-285; 24-23

1001. The right to make entry under section 6 extends to cases where the original was made either before or after the act, if the applicant is otherwise within the terms of said section. 25-113

1002. The right accorded by section 5 arises only where the original entry was made prior to the act, and can be exercised only upon contiguous land; but the entry provided for by section 6 may be allowed whether the original was made prior or subsequent to the act and for land contiguous or noncontiguous to the original. 34-537

1003. A homestead entry for 160 acres, made in good faith by one who has theretofore perfected title under a homestead entry for 80 acres, may stand intact as to 80 acres, where it appears that the entryman is entitled to take that amount as an additional entry under section 6. 27-139, 346, 586

1004. A married woman, not the head of a family, is not entitled to make additional entry under section 6. 29-647; 33-347

1005. The owner of more than 160 acres is disqualified to make additional entry under section 6. 36-96

1006. The right to make additional, under section 6, is not barred by a previous additional entry of contiguous land made by the applicant under section 5, if the whole amount of land thus taken does not exceed 160 acres. 14-277

1007. By exercise of the right conferred by section 6, even though for a less amount of land than might have been taken thereunder, the entryman exhausts the privilege granted by said section 34-294

1008. An entry under section 6 is limited in acreage to an amount which added to the quantity previously entered shall not exceed 160 acres. 20-360

1009. Application, under section 6, may be presented by one who has commuted for part of the land covered by a former entry. 11-364

1010. A noncontiguous tract may not be held in reservation for entry as additional under section 6. 15-119

1011. A soldiers' additional entry, illegal for the want of a proper basis, may not be perfected through a reentry under section 6 where application for such relief is not made until after the initiation of a contest charging such illegality. 13-333

1012. The right to make additional entry under section 6 can not be exercised upon land covered by an existing entry. 13-251

1013. Right to make additional, under said act, accorded upon a pending application, may be treated as a preferred right. 10-78

1014. Under the act of 1889 patent may issue on additional, without further proof where final proof has been made under the original entry. 10-681

1015. The right to make additional entry under section 6 can only be exercised by one who has made final proof and received final receipt on his original entry. 26-604; 28-555; 33-347

1016. A purchase by a homestead entryman under the act of June 15, 1880, of the land covered by his entry (80 acres) is such a compliance with the homestead laws as will entitle him to the additional right conferred by section 6. 25-327

1017. An additional entry, under section 6, can not be maintained without residence on the land covered thereby. 20-246; 28-555; 29-217

(b) Second Entry.

1018. Right to make second, under the act of March 2, 1889; circular of March 8, 1889. 8-314

1019. Application to make second, pending at the passage of the act, secures to the applicant the benefit of said act to the exclusion of intervening adverse claims. 8-457; 10-192

1020. The right to make second, conferred by the act, validates one made prior thereto, though not authorized by law when made. 9-543

1021. The right to make second, under the act, can not be exercised in the presence of an adverse claim arising prior to the act. 19-184

1022. The intent of section 2 was to afford relief to those entrymen who for some reason had lost their land, and,

under the law, were precluded from making a second entry. It was not intended to allow those who made entry before the passage of the act to relinquish and make a new entry. (See 25-82.) 19-526

1023. Section 2 provides for the allowance of a second entry in any case in which the applicant, prior to the enactment of the statute, made entry under the homestead law, but has not perfected title thereunder, either before or since that time. 25-82, 311

1024. On the relinquishment of a homestead entry made prior to the act a second entry of the same tract may be made by the entryman under section 2 of said act. 27-538

1025. A homestead applicant whose application made prior to the act is erroneously rejected, and who thereupon appeals, occupies under section 2 the same status as one who made entry prior to said act; and where said applicant subsequently under a departmental decision enters such portion of the land originally applied for as is then open to entry, reserving all rights under the first application, and thereafter relinquishes such entry, he may make a second entry of the remainder of said lands when it becomes subject to such appropriation. 27-290

1026. The right to make second, under section 2, can not be exercised by one who since the act has perfected title to a tract under either the preemption or homestead law, the right to which was initiated prior to said act. 19-207

1027. Right to make second homestead may be exercised by way of a transmuted preemption claim under said act if initiated prior thereto. 8-422; 10-635

1028. The phrase "had the benefit of such law," as used in section 2, construed. 10-635

1029. The right to make a second under section 2 can not be invoked for the protection of a settler who at the time of his settlement has an entry of record for another tract. (See 29-108.) 22-490

1030. Soldier's filing for one tract does not, under the act, preclude the entry of another. 9-145, 382; 11-384

1031. Second, for the same tract, may be accorded under the act, when the first was illegal when made by reason of the

entryman having previously filed a soldier's declaratory statement for another tract. 9-145

1032. The right to make a second, accorded by section 2, to one who has theretofore exhausted his right by a soldier's filing, can not be exercised in the presence of an intervening adverse claim existing prior to the act. 15-139

1033. One entitled under section 2 to make second entry for 160 acres, and also entitled to soldiers' additional for 80 acres, can not exercise both rights so as to acquire title to more than 160 acres in the aggregate. 33-329

1034. A settler who, under the law as it stood at the time of his settlement, had exhausted his homestead right by a prior entry, is not entitled to make a second or additional, where prior to the act and prior to the initiation of a valid settlement claim, the land has been sold by a railroad company as part of its grant, and the right of the purchaser validated by the act of March 3, 1887. 27-504

1035. A homestead declaratory statement filed and relinquished after the act of March 2, 1889, (25 Stat., 854), defeats the right to make second, under section 2 of said act, and it is also a bar to a similar entry under section 13, act of March 2, 1889 (25 Stat., 980). 18-520

1036. New entry for the same land may be made under section 2 where the first was canceled because made during the maintenance of a preemption claim for another. 9-312

1037. Right is restricted to the exclusive use and benefit of the entryman, and on cancellation of an entry for noncompliance with law he can not reenter the same tract under said act for the benefit of a transferee. 10-79

1038. The right to make second, under the act, not defeated because the failure to secure title under the first was due to bad faith or noncompliance with law. 15-154

1039. Second, may be made under section 2, where the title is not secured under the first through failure to comply with the law in the matter of residence. 13-217

1040. Second, of the same tract may be made under section 2, where the entryman,

through noncompliance with law, fails to secure title under the first. 13-436

1041. Under section 2, a second entry may be allowed, where the first was made prior to the act, but was afterwards canceled for failure to make final proof within the statutory period. 25-475

1042. The commutation of a homestead prior to the act defeats the right to make a second entry under section 2. 21-283; 24-561

1043. Second, is not authorized by section 2 where, prior to said act, the entryman has purchased the land covered by his first entry under the act of June 15, 1880; nor does the temporary suspension of the certificate issued under said purchase bring the applicant within the terms of said section. 13-257; 14-616

1044. Second, not authorized by section 2 where the entryman prior to the act has purchased the land covered by his first entry under the act of June 15, 1880. 14-616

1045. Second, under section 2, can not be held to relate back to a former entry of the same tract, and thus effect a re-instatement of said entry. 14-305

1046. The right to make a second, under section 2, can not be invoked in aid of an application to "amend" an entry made and relinquished after the passage of said act. 17-152

1047. The claimant, in making proof under a second entry allowed under section 2, is entitled to credit for such portion of his military service as was not applied to the first entry. 15-241

1048. One who makes a second entry, under section 2, is entitled to credit for military service in making proof of residence, although allowed credit therefor under his former entry. 14-604

1049. Second, not allowed for a quantity that, added to the first, will exceed 160 acres. 10-661

1050. May not be amended to embrace land not originally intended to be entered, but the applicant may relinquish and make a second entry under section 2. 12-268

1051. The right to make second, of lands embraced within the Seminole purchase, accorded by the act to those who have commuted a former entry, is restricted to

persons who had thus perfected title prior to said act. (See 26-448.) 12-617

1052. Circular March 23, 1895, with respect to second, under the act of December 29, 1894. 20-432

1053. Under the act of December 29, 1894, amending section 3, act of March 2, 1889, the right to make a second, may be recognized when the first is relinquished on account of the arid and unproductive character of the land. 20-308

1054. The right to make a second, under the act of December 29, 1894, is not defeated by the fact that the first was relinquished, if the cancellation would have been ordered, on a disclosure of the facts to the Land Department. 29-716

1055. An application to make a second, under the act of December 29, 1894, must be denied where the first is canceled on a contest charging abandonment. 23-404

1056. The right to make a second, under the act of December 29, 1894, can not be recognized, where the first was abandoned without any attempt to raise a crop. 26-23

1057. The right to make a second, under the act of December 29, 1894, not defeated by the fact that the entryman sold the improvements on the land covered by his first entry, and relinquished his claim thereto, where it appears that, on account of a protracted drought, such action was made necessary to secure the means of subsistence. 26-549

1058. Permission to make a second may be accorded where there is no adverse claim, and the first is relinquished on account of the worthless character of the land, and the applicant is not chargeable with negligence. 28-259

1059. One who makes homestead of arid land in the belief that he can irrigate the same from a proposed Government reservoir, and abandons the land so entered, is not entitled to make a second, either under the general terms of the homestead law or the special provisions of the act of December 29, 1894. 21-205

1060. The act of December 29, 1894, has no application to entries made and abandoned after its passage, but is specifically limited to persons who prior to its passage forfeited their rights for any of

the reasons enumerated in section 3, act of March 2, 1889. 35-71

XVI. Acts of April 28, 1904.

(a) Kinkaid Act (33 Stat., 547).

(b) Second and Additional Entries (33 Stat., 527).

(a) Kinkaid Act.

1061. Circular of May 31, 1904.

32-670; 34-87

1062. Regulations of October 28, 1908.

37-225

1063. Circular of June 27, 1904, relating to filing of soldiers' declaratory statements for lands opened under said act. 33-70

1064. Circular of April 10, 1906.

34-546

1065. Instructions of April 27, 1907, under act of March 2, 1907, extending the provisions of the Kinkaid Act. 35-542

1066. Circular of June 7, 1910, governing entries under Kinkaid Act. 39-18

1067. Revised regulations of January 19, 1912, under Kinkaid Act. 40-369

1068. The act does not repeal any of the provisions of the homestead laws, but merely amends said laws by allowing entry of a greater number of acres, within the limits designated, than is permitted thereunder, and one disqualified to enter under the general homestead laws, by reason of being the owner of more than 160 acres, is likewise disqualified under said act. (See 35-206.) 34-502

1069. The fact that an applicant made a prior homestead entry for and is the owner of a quarter section containing more than 160 acres, will not disqualify him as an entryman under section 3; but if he be the owner of more than 160 acres acquired otherwise than through a prior homestead entry, he is disqualified to make such entry. 35-206

1070. In determining whether an applicant is disqualified to make additional entry under section 2, by reason of the ownership of more than 160 acres, exclusive of that embraced in his original entry, actual acreage is the test that must govern; and where he in fact owns more than 160 acres, exclusive of the land in his original entry, he must be held disqualified, notwithstanding such land com-

prises a technical quarter section and that title thereto was not acquired under a homestead entry made by him, but through purchase from the original entryman. 35-351

1071. A former homestead entry outside of the territory described in the Kinkaid Act, is no bar to an entry under the provisions of that act of a tract which, together with the land in the former entry, shall not exceed 640 acres. 37-171

1072. Persons who had made homestead entry within the area withdrawn for irrigation purposes under section 1 of the Kinkaid Act, are upon restoration of the withdrawn lands to entry entitled to the preference right to make additional entry granted by section 3 of said act, for a period of 30 days from the date of restoration. 37-197

1073. In a case of a homestead entry of lands within the territory designated under the Kinkaid Act, made after the passage of said act, at a time when the lands were embraced in a reclamation withdrawal as irrigable lands, which limited the right of entry to 160 acres, the entryman, upon the revocation of the withdrawal, is entitled to enlarge his entry by taking contiguous lands to make up the full area allowed by law. 40-490

1074. By virtue of section 2, act of March 2, 1907, credit for military service may be allowed in entries under the Kinkaid Act. 35-613

1075. With respect to the question of compactness, an entryman under the Kinkaid Act is entitled to take any legal subdivision of public land he desires and then fill out or complete his entry by the selection of other lands in addition thereto so as to make the entire entry in a form as compact as possible, considering the status of the surrounding lands. 39-1

1076. The qualifications of an applicant to make additional entry under the act must be determined as of the date of the presentation of the application and not as of the date when his original entry was made. 34-502

1077. The qualifications of an applicant to make additional entry under section 2 must be determined as of the date of the presentation of the application, and only

those who on that date possess the requisite qualifications entitling them to make entry under the general homestead law are qualified to make such additional entry; hence, a married woman living with her husband and not the head of a family is not qualified to make entry under said section, notwithstanding such disqualification did not exist at the date her original entry was made. 35-323

1078. Residence upon the land embraced in the original entry is an indispensable prerequisite to the preference right to enter additional contiguous land. 36-527

1079. Section 3 of the act contemplates, as a condition precedent to the passing of title to an additional entry thereunder, residence upon and cultivation of the land embraced in the original entry, or upon the original and additional entry, for the full period of five years; and if both entries are concurrent, and the original is commuted, title will not pass for the additional until there has been five years' residence and cultivation upon the land included in the original or upon that and the additional entry. 36-402

1080. The preference right of entry accorded by the act vested only in persons qualified to exercise it, and if, prior to the vesting thereof, intervening rights attached to the land, they will not be disturbed. 35-256

1081. The preference right of entry under section 2 attaches immediately upon claimant becoming qualified to proceed thereunder, in the absence of any intervening adverse right; and where a claimant whose entry remains intact was not, at the date of the act, occupying the land embraced in his entry, but subsequently cured his default, his rights under the statute date from the time he commenced compliance with the law in good faith, but if prior to that time any other qualified claimant had *exercised* his preference right upon the lands subsequently applied for by the defaulting applicant, the rights of the prior entryman will not be disturbed. 35-314

1082. Where two or more claimants are entitled to the preference right of entry for the same land, and there is a limited amount of land open to entry upon which the respective claimants may exercise the

right, an equitable adjustment should be made between them in order that all may derive the greatest benefit under their preference rights. 35-213

1083. The act authorizes a second or additional entry of so much land as added to that embraced in the first entry shall not exceed 640 acres, regardless of the fact that the entryman may have relinquished his first entry for a valuable consideration. 34-435

1084. The act contemplates only one additional entry under its provisions; and where such entry is made, even though for an amount of land less than authorized by the act, the right is exhausted. (See 35-102.) 34-468

1085. The right to make additional entry accorded by section 2 is limited to persons who made their original entries prior to the date of the act. 34-134

1086. The fact that the owner of an original homestead has mortgaged the same does not disqualify him to make additional entry under section 2 of the act of April 28, 1904, as amended by section 7 of the act of May 29, 1908, where under the law of the State a mortgage does not divest the mortgagor of title or right of possession. 39-16

1087. The term "own and occupy" in said sections, defining persons qualified to make additional entry thereunder, implies that the occupancy must be one of right as owner and that the ownership and occupancy of the original homestead shall continue for the full period of five years from date of the additional entry. 39-16

1088. The right of additional entry provided by section 2 is limited to persons who theretofore had entered under the homestead laws lands within the territory described in the act, and who own and occupy such lands, and can only be exercised upon lands contiguous to the original entry. 34-60

1089. The term "own and occupy" in section 2, referring to those entitled to a preference right to enter contiguous land under that section, is held to mean such possession of and dominion over the land as is required by the general homestead law; that is, such residence on the land as would defeat a contest based upon a charge of abandonment. 35-430

1090. The right of entry granted by section 2 can only be exercised by those persons who, at the date of making entry thereunder, "own and occupy the land heretofore entered by them," and the occupancy of the land "heretofore entered" must be such as will defeat a contest based upon the charge of abandonment.

35-560

1091. The right of additional entry accorded by the proviso to section 3 extends to all persons who prior to application to exercise said privilege had made homestead entry, and there is no warrant in the act for further limiting the right, as is done in the instructions of May 31, 1904, to a homesteader who had resided upon and cultivated the land embraced in his original entry for the period required by law.

34-60

1092. Where an application was pending at the date of the act, and prior to allowance of entry thereon the applicant presented a supplemental application to enter additional lands under the act, requesting that the two applications be considered together, the fact that entry on the original application was inadvertently allowed without considering the supplemental application, does not warrant rejection of the application for additional entry on the ground that the original entry was allowed subsequently to the act.

34-274

1093. One who makes additional entry for the full quantity of land to which he is entitled under the act, will not be permitted to subsequently amend his entry by eliminating a portion thereof and substituting other contiguous lands which have since become vacant, merely because the lands desired are of better quality, where the proposed amendment is not shown to be in accordance with his original intention.

36-507

1094. An additional entry, even though for a less amount of land than authorized by the act, exhausts the right; but where at the time the entryman sought to exercise his additional right part of the lands contiguous to his original entry and subject to his preference right and desired to be entered by him were found to be embraced within an existing though invalid additional entry made by another under said act, and he thereupon made entry for

a less amount of land than he was entitled to enter, and thereafter by means of a contest procured the cancellation of the invalid entry covering the remainder of the lands desired by him, he may, upon the cancellation of such invalid entry, be permitted to enter such lands in accordance with his original intention.

34-527

1095. Where one entitled to make additional entry exercises his right for a less amount than he is entitled to enter, and at the time of making such entry announces his intention to amend his additional entry to include other lands desired by him, sufficient to aggregate the quantity to which he is entitled under the act, as soon as he succeeds in clearing the records of other claims to such additional lands, and takes prompt action to that end, he may be permitted to amend his entry in accordance with such purpose when the additional lands desired by him become subject to entry, provided the rule as to compactness be observed.

34-573

1096. Where an entryman under the Kinkaid Act at the time of making application to enter gave notice of his intention to embrace other adjoining land by amendment as soon as the record could be cleared of an existing entry covering the same, the fact that such adjoining land became subject to entry as the result of the contest of another, and not of the entryman himself, is no reason for denying his application to embrace the same by amendment.

39-420

1097. An entryman who fails to take the full quantity of land he is entitled to enter, for the reason that there are at that time no other adjoining unappropriated public lands subject to entry, may, if other adjoining lands subsequently become vacant, enlarge his former entry to the full area permitted by the statute, by including contiguous tracts in and as a part thereof, regardless of whether at the time of his original entry he contemplated taking those particular tracts, if they should subsequently become vacant, provided it be satisfactorily established that he did not at the time of making the original entry intend thereby to exhaust the right conferred by the statute.

35-102

1098. The provision that the land entered "shall be as nearly compact in form

as possible, and in no event over 2 miles in extreme length," contemplates that the original entry shall be taken into account in cases of additional entry under section 2, and that the original and additional entries taken together shall conform to this requirement. 35-585

1099. In determining the "extreme length" of an entry under the act, the measurement should follow the lines of the public survey, and no entry should be allowed for any tract exceeding 2 miles either in length or breadth, and no application for an entry in as nearly compact form as possible should be rejected solely because its combined length and breadth or diagonal measurement exceeds 2 miles. 34-690

1100. Where an entryman does not include in his entry the full area allowed by law, for the reason that there is no land subject to entry adjoining that entered, he may, if adjoining land thereafter becomes subject to entry, enlarge his original entry so as to include therein the full area allowed by law. 34-690

1101. Where one owning and residing upon a tract of land within the area covered by the Kinkaid Act makes entry of adjoining land under that act which together with the original tract does not exceed 640 acres, and continues to reside upon the original tract, cultivating and improving the entered land, such entry may be considered as and transmuted into an additional or adjoining farm entry and his residence regarded as covering the entire area as one farm unit, notwithstanding a contest against the entry charging failure to reside thereon. (Vacated, 40-420.) 40-93

1102. The Kinkaid Act does not give any right of adjoining farm entry nor in anywise extend or enlarge the right of adjoining entry given by section 2289 of the Revised Statutes; and one owning and residing upon a tract within the Kinkaid area, acquired by purchase, has therefore no other or greater right, by virtue of the Kinkaid Act, to make adjoining farm entry of contiguous land and acquire title thereto by continuing residence upon the original tract and cultivating and improving the adjoining tract, than is recorded generally by said section 2289. 40-420

1103. The provision that the entryman at the time of making final proof must show affirmatively that he has placed upon the land permanent improvements of the value of not less than \$1.25 per acre for each acre included in his entry, contemplates, in case of an additional entry under said act, that the entryman shall make the required expenditure for improvements, exclusive of and in addition to the improvements on his original homestead. 35-613

1104. Lands within that part of the Fort Randall abandoned military reservation in the State of Nebraska, not selected by the State or otherwise disposed of under the act of March 3, 1893, providing for the disposition of the public lands in that reservation, are subject to entry under the Kinkaid Act. 35-208

1105. The act of March 2, 1907, amended the act of April 28, 1904, to permit persons who made entry between April 28 and June 28, 1904, to make additional entry in the same manner as those who made entry prior to April 28, "subject to existing rights"; and where an additional entry under section 2 of the act of April 28, based upon an original entry made between the dates mentioned in the amendatory act, was prior to the date of that act held for cancellation, upon contest, on the sole ground that it was invalid because based upon an original entry made subsequently to the passage of the act of April 28, the additional entry will be held intact, the invalidity being cured by the amendatory act and the rights of the entryman being superior to those of the contestant. 36-3

(b) Second and Additional Entries.

1106. Circular of May 20, 1904. 32-639

1107. Circular of September 1, 1905, relative to second entries under section 3, act of June 5, 1900, and section 1, act of April 28, 1904. 34-114

1108. Construing the acts of June 5, 1900, and April 28, 1904, together, the earlier act is held to be modified by the later, and all applications to make second entry filed subsequently to the later act should be disposed of thereunder, so far as the provisions of that act are applicable. 33-657

1109. Instructions of June 11, 1907, relative to second entries. 35-590

1110. Since the act of April 28, 1904, the Secretary of the Interior has no discretionary power to allow second entries, but his power in this respect is limited by the provisions of that act. (See 38-406.) 36-154

1111. The right to make second entry is limited to persons who prior to the passage of the act actually entered other lands under the homestead law. 35-57

1112. There is no provision in the act authorizing a second entry based upon settlement made prior to the passage of the act, where the original entry was not made until subsequent to that time. 35-57

1113. The right of entry conferred by section 1 is not limited to those who theretofore made and abandoned or relinquished but one homestead entry. 35-375

1114. The right to make a second entry having once been exhausted is not restored by relinquishment of the second entry. 35-407

1115. An entryman is not entitled to a second entry under the act upon a showing that he relinquished his original entry for the reason that the land embraced therein was unsuitable for farming purposes and was not of sufficient acreage to enable him to support himself and family by using the land for grazing purposes. 34-60

1116. An entryman who secured a valuable right in return for the relinquishment of his entry, relinquished for a consideration within the meaning of section 1, and is therefore not entitled to make second entry. 35-447

1117. Where on account of irregularity of the surveys one makes improvements on land intended to be taken as a homestead but not included in the entry as made, he may properly sell such improvements, and by such sale his right to make another entry under the act of April 28, 1904, is not prejudiced though followed by relinquishment of the lands actually embraced in his entry but never intended to be taken. 36-64

1118. An application to make second entry filed subsequently to the act must be denied where it appears that the applicant

failed to make a *bona fide* effort to comply with the law as to his original entry. 35-301

1119. An entry made and relinquished *after* the passage of the act can not be made the basis for the restoration of the homestead privilege under the act. 35-273

1120. Where one entitled to have his homestead right restored to him under the act, and also entitled to make an additional entry under section 2 of the Kinkaid Act, exercises the latter privilege, he thereby exhausts his homestead rights and is not entitled to claim any benefits under the former act. 35-273

1121. The provisions of the act are not applicable to entries based upon applications filed prior to the act; but the qualifications of all claimants who prior to the act filed proper application for lands subject to entry should be determined under the law as it existed at the time application was filed. 35-134

1122. The mere allegation by an applicant to make second entry that he relinquished his former entry without consideration, will not, in the absence of an averment that he was mistaken as to the character of the land originally entered or that he was unable to complete the entry either on that account or because of some unavoidable complication of his personal or business affairs, bring him within the saving provisions of the act. 35-233

1123. The provision authorizing second entry in cases where the entryman was unable to perfect his original entry "on account of some unavoidable complication of his personal or business affairs," and "did not relinquish his entry or abandon his claim for a consideration," contemplates that the "unavoidable complication" shall be one arising subsequent to the making of the entry, and which prevented the completion thereof, and not one existing at the time the entry was made. 35-579

1124. A homesteader who in the exercise of his right to make second entry under the act of April 28, 1904, enters Chippewa agricultural lands, opened to disposal under the act of January 14, 1889, may, by virtue of the act of March 3, 1905, extending the provisions of section 2301,

R. S., to such lands, commute his entry by paying the price provided in the act of 1889, notwithstanding the provision in the act of 1904 forbidding commutation of entries allowed thereunder. 36-363

1125. Circular of May 20, 1904. 32-639

1126. Circular of July 27, 1907, relative to additional entries. 36-46

1127. Paragraph 3 of circular of July 27, 1907, amended. 37-160

1128. The provisions relating to additional entries, do not apply to or for the benefit of any person who does not own and occupy the lands covered by the original entry. 33-448

1129. The act does not require that the right of additional entry accorded by section 2 shall be exercised prior to completion of title to the original entry, and the fact that the original entry was commuted prior to the filing of the additional application in nowise affects the additional right, provided the applicant at that time continues to own and occupy the original tract. 37-120

1130. An additional entry under the act is not subject to commutation. 33-448

1131. Additional entry will not be allowed of lands subject only to entry under reclamation act. 36-449

XVII. Enlarged.

1132. Circular of March 25, 1900. 37-546

1133. Instructions of May 21, 1900, relating to additional entries under enlarged homestead act. 37-697

1134. Instructions of May 24, 1900, with respect to Form 4-003 in connection with enlarged homestead applications. 37-707

1135. Instructions of December 14, 1900. 38-361

1136. Instructions of July 12, 1911, amending first paragraph of section 7 of the instructions of December 14, 1900. 40 184

1137. Instructions of July 18, 1910, under act of June 17, 1910, relating to enlarged homesteads in Idaho. 39-96

1138. An enlarged homestead entry can not be made so as to contain in either the original or additional entry a tract of land which has not been designated as

subject to the provisions of the enlarged homestead act. 40-68

1139. An entry under the enlarged homestead act, based upon settlement prior to survey upon lands subsequently designated as subject to disposal under that act, relates back only to the date fixed by the Secretary in making such designation, or where no specific date is fixed, to the date when the order making the designation is received at the local office. 40-355

1140. One who made entry under section 2289, R. S., based upon settlement prior to survey, for the full amount he is entitled to take under that section, can not, in event the land embraced in his entry together with the surrounding land is subsequently designated under the enlarged homestead act, be permitted to enlarge his claim so as to embrace adjoining lands, to the prejudice of the rights of an intervening settler. 40-355

1141. In order to entitle one to make an entry for 320 acres under the enlarged homestead act he must be possessed of the right to make homestead entry for 160 acres elsewhere; and one entitled under section 6, act of March 2, 1889, to make an additional entry for an amount less than 160 acres, is not by virtue of that fact qualified to make an entry for 320 acres under the enlarged homestead act. 40-526

1142. The right to make enlarged entry under section 1 of the act is confined to persons qualified to make entry under the homestead laws of the United States; and one who acquired title under the general homestead law to a technical quarter section, even though containing slightly less than 160 acres, is not entitled to make entry under section 1 of the enlarged homestead act. 40-193

1143. Lands within a national forest listed under the act of June 11, 1906, as subject to homestead entry, may be appropriated only under that act; and the fact that they are also embraced within a larger area designated as of the class subject to entry under the enlarged homestead act does not render them subject to disposition under said act. 39-604

1144. A designation or classification of lands under the enlarged homestead act

is not necessarily conclusive; but an entry made on the strength of such designation should not be canceled in the absence of a showing of bad faith, fraud, or failure to comply with law—especially in the absence of a clear and definite showing that the land is "susceptible of successful irrigation at a reasonable cost from any known source of water supply."

39-33

1145. Instructions of April 6, 1912, relating to additional entries under section 3.

40-578

1146. Instructions of August 24, 1910, relative to qualifications to make additional entry under section 3.

39-164

1147. A homesteader who made entry under the general law, upon which patent has issued, is not entitled to an additional entry under section 3, act of February 19, 1909.

38-497

1148. A married woman is not by reason of her marriage disqualified to make entry under section 3 of the enlarged homestead act of February 19, 1909, as additional to an entry made by her prior to her marriage.

38-577

1149. Upon the death of a homestead entrywoman prior to completion of her entry her heirs are entitled to make additional entry of contiguous land under section 3 of the enlarged homestead act, provided they reside upon and cultivate the original entry.

40-573

1150. The widow of a deceased homestead entryman has the same right to enlarge the original entry of her deceased husband, by an additional entry under section 3, act of February 19, 1909, as he himself would have if living, provided she continues to maintain residence upon the original entry.

39-346

1151. One who makes entry under the enlarged homestead act for less than 320 acres may, under section 3 of said act, enter other contiguous lands, subject to that act, which shall not, together with the land in the original entry, exceed 320 acres.

40-310

1152. One who, under the general homestead law, makes entry of lands designated as within the provisions of the enlarged homestead act may, under section 3 of said act, and subject to other provisions thereof, enter additional lands con-

tiguous to his former entry, which, together with the lands in the original entry, will not exceed 320 acres.

40-143

1153. One who makes additional entry for less than the area he is entitled to take under section 3, act of February 19, 1909, may be permitted to enlarge his entry, where it is clearly shown that he did not thereby intend to exhaust his right and took prompt action looking to amendment of the entry by the addition of adjoining land.

39-36

1154. The right to make additional entry under section 3, act of February 19, 1909, is determined by conditions existing at the time the right is attempted to be exercised and not at the date of the classification and designation of the land under that act; and where one qualified to make such entry at the time of the classification and designation of the land thereafter submits final proof upon his original entry, he thereby disqualifies himself to make entry under that section.

39-206

1155. Directions given for the amendment of paragraph 5 of the circular of December 14, 1909, 38 L. D., 361, and the circular of July 18, 1910, 39 L. D., 96, to accord with the views herein expressed.

39-206

1156. Residence and cultivation upon the original entry prior to the date of the additional can not be credited to the latter so as to allow final proof thereon prior to the expiration of five years from the date thereof; but title to the additional entry must be earned by residence upon either the original or additional for the full period of five years and cultivation of the area fixed by the statute.

40-446

1157. Cultivation of an area sufficient to meet the requirements as to the additional entry will not relieve the entryman from also meeting the requirements of the general homestead law as to cultivation upon the original entry.

40-446

1158. The provision in section 4 of the enlarged homestead act requiring proof of cultivation of at least one-eighth of the land the second year and one-fourth thereafter, contemplates one-eighth or one-fourth of the area of the additional entry made under said act, and not of the combined area of both the original and additional entries, where the original entry

was made under the general homestead law; but such cultivation may be made anywhere within the limits of the combined entries—entirely on the original entry, entirely on the additional, or partly upon each. 40-446

1159. An entry, under sections 1 to 5 of the enlarged homestead act, of lands designated as subject to entry under said sections, may, upon the lands being subsequently designated as subject to entry under section 6 of that act, be changed to stand as an entry under that section. 40-487

1160. Lands embraced in entries made under the general homestead law are, if the facts justify such action, subject to designation under section 6 of the enlarged homestead act, and entrymen will not, after such designation, be required to reside thereon. 38-584

1161. One who in good faith makes homestead entry of lands designated under section 6, act of February 19, 1909, as not containing a sufficient supply of water suitable for domestic purposes and therefore subject to entry free from the necessity of residence, will not be required to establish residence should a sufficient supply of water be subsequently obtained. 38-586

1162. There is no authority for establishing a fixed and arbitrary limit, to be measured either by distance or time, from land entered under section 6 of the enlarged homestead act, within which the entryman must reside; if he successfully farms the land, in person or under his personal supervision, he meets the requirements of the statute. 39-166

IDAHO.

See SCHOOL LAND, 88-89; STATES AND TERRITORIES, 92-104.

ILLINOIS.

See SWAMP LAND, 86-88.

IMPERIAL VALLEY.

See FINAL PROOF, 397; SCHOOL LAND, 117; SURVEY, 2, 186.

IMPROVEMENTS.

See FINAL PROOF, 381-389, 566-572; RESERVATION, 137, 190-191, 262, 265; RESIDENCE; SETTLEMENT.

1. Purchase of timber-culture entryman's improvements gives no preferred right on cancellation of entry. 2-50

2. A desert entryman who becomes the owner of improvements placed upon the land by a prior entryman in compliance with the desert land law, is entitled to credit for such improvements the same as if placed upon the land by himself. 33-287

3. A desert entryman is entitled to credit for improvements placed upon the land by him while holding the land under a prior homestead entry, provided they are of a character required by the desert-land law. 33-547

4. Right of a settler prior to survey to remove such as can be severed from the realty conceded where the land is sold as an isolated tract. 9-529

5. As to right of entryman to remove, after cancellation of entry; the Department is vested with due authority to protect the land from trespass. 6-239

6. The Land Department has no jurisdiction over disputes between settlers concerning their claims against each other on account of alleged improvements. 20-3

7. Rights as to the ownership or possession of, placed on public land without authority of law, are not determined by a judgment of the department sustaining an entry of said land. 28-250

INDEMNITY.

See PRIVATE CLAIMS, XII; RAILROAD GRANT, VI; SCHOOL LAND, II; SWAMP LAND, III.

INDIAN LANDS.

See FEES, 67-71; HOMESTEAD, V, 379; OKLAHOMA LANDS; RESERVATION, II; RIGHT OF WAY.

I. Generally.

II. Allotment.

III. Patent.

IV. Conveyance—Lease.

V. Individual Tribes—Lands Opened.

I. Generally.

1. Circulars of May 31, 1884, and October 26 (27), 1887, with respect to land in the possession of Indian occupants.

3-371; 6-341; 32-382

2. Actually included within Indian occupancy are not subject to settlement or entry.

16-15; 27-102

3. Included within the actual possession of an Indian tribe are excluded from the operation of the preemption laws.

16-209

4. Entries and filings not allowed upon lands in the occupancy of Indians.

3-371; 6-341

5. Lands subject to Indian occupancy are not open to other appropriation.

12-516; 13-269, 302, 578; 15-19

6. Land in the occupancy of an Indian is not subject to entry, and a contest against an entry of land so excluded from disposition will confer no right upon the contestant that will prevent the department from subsequently holding the land in reservation, with a view to its allotment to the Indian.

24-413

7. The status of the Seminole Indians, as occupants of public lands in Florida, is too indefinite in character to receive recognition in patents issued under the swamp grant.

26-117

8. Prior right of Indian occupancy, so long as undisturbed by the Government, defeats the enforcement of the swamp grant.

19-518

9. Lands which at date of survey were occupied by an Indian living apart from his tribe, and improved by him, and for which application for allotment has been made by the Indian under section 4, act of February 8, 1887, are excepted from the grant made to the State of Washington for school purposes.

33-454

10. Extinction of title under second section of the grant to the Northern Pacific did not affect lands within technical reservations, but lands within the "Indian country."

1-368; 5-138, 343

11. Instructions of June 18, 1900, under act of May 31, 1900, with respect to settlement on ceded Indian reservations.

30-361

12. Regulations of April 18, 1899, concerning right of way for railway, tele-

graph, and telephone lines, under the act of March 2, 1899.

28-457

13. Disposition of, under treaty not effective prior to the action of Congress.

5-133

14. The department has no such jurisdiction over the Indians of the Pueblo of Cochiti, or their lands, as will authorize it to lease said lands, or to "approve or disapprove" the leasing thereof.

19-326

15. Instructions of July 23, 1906, relative to preference right of entry accorded purchasers of improvements on Indian lands.

35-56

16. A reservation of a tract, for the benefit of an individual, provided for in a treaty that extinguishes the Indian title to certain tribal lands, of which said tract is a part, vests a title in such reserve which he may convey; and the transferee in such case is entitled to a patent.

20-171

17. Under an order reserving a tract of land for the benefit of an Indian, with a view to his subsequent entry thereof, there is no right conferred upon the Indian by which his relinquishment will serve to release the land from reservation.

25-95

18. The word "located," as used in the act of July 4, 1884, in providing for Indian homesteads, is employed in the sense of *settlement*, and refers to a settler who is living on the land.

29-277

19. Annuity payments under the act of January 18, 1881, limited to homesteaders.

3-580

20. Sale of agency buildings and public lands under sections 2122 and 2123, R. S., specially confided to the discretion of the Secretary of the Interior.

3-425

21. Where lands and the improvements thereon have been separately appraised under the act of March 2, 1889, and the Indian has accepted such appraisal, and been removed from the land, there is no authority for the sale of said property for less than the whole amount of the appraisal, even though the improvements were subsequently destroyed.

22-37

22. A religious society that occupied land at the passage of the act of March 2, 1889, can have the land, to the extent of 160 acres, so long as the same shall be used for educational and missionary work;

or, such society may purchase 160 acres; but can not have 160 acres under the first provision of section 18 of said act, and purchase a similar amount under the second provision of said section. 18-188

23. A religious society not in the occupancy of land within either of the two reservations named in section 18, act of March 2, 1889, can not be granted the temporary use of these lands, but permission may be given such society, with consent of the Indians, to occupy said lands so long as the Indians and the Secretary of the Interior may deem proper. 18-188

24. The amount of land that may be acquired by a religious society under section 18, act of March 2, 1889, is limited to 160 acres at any one point. 29-331

25. All the lands occupied by a religious society at the date of the passage of the act of March 2, 1889, may be held by such society, to the extent of not more than 160 acres in any one tract, if each separate tract was in actual use for religious or educational work among the Indians at the date of said act. 18-209

26. Under the act of February 8, 1887, the Secretary may confirm the occupancy of, for religious or educational work among the Indians, if such action is for the welfare of the Indians and the lands are of a class subject to allotment. If such occupancy subsequently appears to not be to the interest of the Indians, the Secretary may direct its discontinuance. 20-462

II. Allotment.

27. Regulations of June 15, 1896, with respect to allotments, and the effect thereof. 22-709

28. Regulations of June 15, 1896, modified. 28-564, 569

29. Regulations of April 10, 1901, under section 4, act of February 8, 1887. 30-546

30. Instructions of February 21, 1903, under section 4, act of February 8, 1887, as amended by the act of February 28, 1891. 32-17

31. Instructions of January 21, 1907, relative to notice to Commissioner of Indian Affairs of action affecting Indian allotments. 35-396

32. Regulations of May 28 and instructions of June 14, 1909, governing exchanges of allotments under act of March 3, 1909. 39-41, 42, 44

33. Children born of a white man, a citizen of the United States, and an Indian woman, his wife, are by birth citizens of the United States and not Indians, and therefore not entitled to allotments under the act of March 2, 1889. 13-683; 19-311

34. Children born of a white man, a citizen of the United States, and an Indian woman, his wife, follow the status of the father in the matter of citizenship, and are not entitled to allotments under section 4, act of February 8, 1887, as amended by the act of February 28, 1891. See 35-549.) 24-311; 30-606

35. By the act of June 7, 1897, children of an Indian woman by blood, who at the time of her death was recognized as a member of a tribe, are placed on the same footing as to rights in the property of such tribe as the other members thereof; but the children of one thus protected are not entitled to allotments if the parent, prior to their birth, abandon the tribal relation. 26-71

36. An Indian woman, recognized as a member of a tribe, is not by reason of her marriage to a white man deprived of her right to allotment in the tribal lands; and the children of such woman are likewise entitled to allotment. 33-205

37. Where an Indian woman, a member of one tribe, marries an Indian man, a member of another tribe, but is never enrolled as a member of her husband's tribe, she is entitled to an allotment in her own tribe, as head of a family, notwithstanding her husband, prior to his marriage, received an allotment in his tribe as a single person. 34-252

38. The right to receive an allotment under the act of March 2, 1889, does not extend to the half-breeds whose claims were recognized in the treaty of 1830, and for whom special provision was made by the act of July 17, 1854. 17-457

39. The last proviso to section 8, act of March 2, 1889, does not confer the general right to receive allotments upon half-breeds, but makes a special provision

where such mixed bloods may surrender their locations. 17-457

40. An Indian may not be a member of two tribes in a sense that will entitle him to secure lands from both tribes under the provisions of the allotment act of February 8, 1887. 19-329

41. Membership in an Indian tribe may be shown by the laws and usages thereof. 19-311

42. One who is recognized by the laws and usages of an Indian tribe as a member thereof, or who is entitled to be so recognized, is qualified to take an allotment out of the public lands under section 4, act of February 8, 1887, as amended by act of February 28, 1891. 35-549

43. The right to an allotment under the act of February 8, 1887, as defined in the departmental regulations authorized by section 3 thereof, requires the applicant to be a recognized member of an Indian tribe, or that the father or mother of the applicant should have been so recognized. 20-167

44. Indian wives of Indians who have entered lands under the homestead laws are not entitled to allotments under section 4, act of February 8, 1887, whether the marriage took place prior or subsequent to the act of August 9, 1888. 31-417

45. Allotments of, constitute an appropriation of the land. 5-311

46. A protest against the allowance of an Indian allotment justifies a hearing, where it is shown that said allotment, as applied for, covers land included within the occupation, inclosure, and exclusive possession of one who in good faith has placed valuable improvements thereon, relying on a school indemnity selection that subsequently proved invalid. 28-37

47. The departmental approval of, is a final determination of the right of the Indian thereto, and a contest against the same will not be entertained. 19-167

48. Land included in a suspended Indian allotment is not open to entry; nor will a contest against said allotment filed subsequent to the order of suspension be entertained. 27-554; 28-519

49. A hearing will not be ordered to ascertain alleged settlement rights acquired on land embraced within a suspended Indian allotment, where, prior to the alleged

settlement, the allotment was allowed and the order of suspension made. 28-196

50. The guardianship and control of the United States over the Indians continues after their lands have been allotted to them in severalty and after they have become citizens of the United States, and the Government has full authority to use military force to eject intruders from the allotments of the Indians. 31-439

51. The action of the Office of Indian Affairs on allotments is conclusive, so far as the General Land Office is concerned, as to whether the Indian was a settler on the land, and whether he was entitled, as an Indian, to receive an allotment. 24-424

52. The rule announced in *Adams v. George*, 24 L. D., 424, that the action of the Office of Indian Affairs on allotments is conclusive, so far as the General Land Office is concerned, as to the right of the Indian, is an administrative regulation as between the Office of Indian Affairs and the General Land Office, but does not limit the authority of the department to see that the lands are properly disposed of and that the allotments are properly allowed. 27-455

53. The Secretary has authority to investigate the validity of an Indian allotment at any time prior to the issue of the first patent provided for under the allotment law, and, on sufficient cause shown, to rescind the approval of an allotment and reject it. 24-264

54. An allotment duly made and approved must be regarded as a judicial determination that the allottee is entitled to an allotment in the reservation involved, and such question, so determined, must thereafter be held *res judicata*. 24-323

55. Departmental determination that an applicant for the right of allotment is entitled to recognition, so far as tribal relationship is concerned, removes such question from further consideration in subsequent proceedings involving assertion of said right. 24-323

56. An adverse claim set up against an approved allotment by another applicant for the right of allotment, and based on alleged prior selection and improvement of the tract in question, can not be recognized, in the absence of an affirmative showing of injustice done, amounting to

a fraud upon his equitable rights in the premises. 24-323

57. The allotment act of 1887 to be carried into effect under executive direction. 5-520

58. In the enactment of section 4, act of February 8, 1887, with respect to allotments for nonreservation Indians, Congress contemplated that it should be administered in part by the Commissioner of the General Land Office and in part by the Commissioner of Indian Affairs, each officer acting in a separate and distinct sphere of duty under the direction of the Secretary. 28-564

59. Allotments may be made by regular agent in charge or by special agents. 5-520

60. An allotment made and approved on the selection of the allotting agent, and without a formal selection on the part of the allottee, is not for such reason invalid. 24-323

61. An Indian to whom land in a reservation has been allotted as a member of a tribe, but which land has never become a part of the public domain subject to the homestead law, can not, as a citizen of the United States, make homestead entry of the land so allotted to him. 34-702

62. The right of an Indian to the lands actually surveyed for, and allotted to him, but omitted from the trust patent by mistake, is not defeated by the erroneous inclusion of such lands in the schedule of lands opened to settlement by proclamation; and subsequent adverse claimants for said lands are bound to take notice of the occupancy and possession of the allottee. 29-251

63. Allotments provided for prior to the act of 1887 not necessarily confined to the terms of the prior act. 11-107

64. The allotment act of 1887 recognizes the right of additional allotment to aggregate the amount named in said act. 5-520

65. Allotments are made by legal subdivisions of the sections, without respect to the actual area included in such subdivision. 8-647

66. Under section 4, act of February 8, 1887, allotments are provided for nonreservation Indians and their minors under the same restrictions as enacted for

reservation Indians, with the additional requirement of actual settlement. 8-647

67. Allotment to a minor child under section 4, act of 1887, need not be contiguous to that made to the head of the family. 8-647

68. Contiguity of the tracts should be required in case of allotments outside of a reservation. 8-647

69. Orphan children under 18 years of age not entitled to the benefits of section 4, act of February 8, 1887. 8-647

70. Section 4, act of February 8, 1887, authorizes allotment of public lands on behalf of minor children of an Indian only where the parent has settled and made his home upon the public domain. 40-148

71. A nonreservation Indian who makes application for allotment under section 4, act of February 8, 1887, has no authority to relinquish except by the consent and under direction of the department. 12-162

72. The relinquishment of an Indian allotment is not effective until approved by the Secretary; and, pending departmental action thereon, no intervening claim to the land should be allowed. 29-680

73. Proof of actual settlement not required in allotments under section 4 of the act of 1887 to minors. 8-647

74. The act of July 4, 1884, does not bar allotments on the Old Columbia Reservation under section 4, act of February 8, 1887. 6-43

75. The right of nontribal Indians dependent upon settlement. 6-45

76. A nontribal Indian who has received the full benefit of the preemption and homestead laws is not entitled to an allotment under the act of February 8, 1887. 12-181

77. Under the act of March 3, 1875, and the general allotment act, the right of an Indian to an allotment of tribal lands is not lost by abandonment of the tribal relation. 26-71

78. Members of the citizen band of Pottawatomies may elect whether they will take allotment under the act of May 23, 1872, or February 8, 1887. 11-103

79. New selections may be allowed under act of May 23, 1872, in lieu of allot-

ments pending thereunder and unperfected at the passage of the acts of March 1 and 2, 1889, and certificates therefor may issue on payment of the sum per acre originally given by the United States.

11-103

80. Allotments to the citizen band of Pottawatomies on selections under the act of 1872, that were made before the ratification of the agreement of June 25, 1890, and authorized by law, may be perfected notwithstanding the act of March 3, 1891.

12-357

81. The right of the Sac and Fox Indians to take lands on which they had made valuable improvements prior to ratification of the agreement of June 12, 1890, extends to lands in sections 16 and 36.

12-359

82. The size of allotments to the Flaudreau Sioux provided for by section 7, act of March 2, 1889, is governed by the provisions regulating allotments to other Indians on the Great Sioux reservation.

12-292

83. The act of February 3, 1887, gives the Indians the same right within a reservation created by executive order as if made by treaty or statute, and lands subject to such right can only be relieved therefrom by congressional action.

12-205

84. Authority to make allotments under the act of March 2, 1889, terminates when the Secretary has approved the lists containing the names of those entitled to allotments.

12-168

85. The inadvertent omission of a member of the tribe from the approved allotment list may be corrected on due proof of the fact.

12-168

86. An unapproved schedule of allotments may be amended by adding such allotments as should be properly included therein.

13-316

87. The relinquishment of an allotment is inoperative if not approved by the department.

24-323

88. When an allottee has relinquished his allotment, and his relinquishment has been accepted, applications to enter the land so released may be received and allowed, upon the Indian surrendering possession of the land.

27-603

89. An order of the department accepting the relinquishment of an allotment

takes effect as of the date thereof, and the land becomes subject to entry as of such date, without regard to the time when such order is noted of record in the local office.

27-150

90. A relinquishment of a Crow Indian allotment under the agreement of December 8, 1890, is not effective until approved by the department; but an entry of the land so relinquished prior to such approval, while irregular, is not invalid, and will not be canceled where the relinquishment is subsequently approved.

27-305

91. An application to relinquish an allotment and make homestead entry of other land, on the ground that the applicant is not entitled to an allotment, will not be allowed where the application suggests an attempted sale of the tract allotted, and diligence in the matter of correcting the alleged mistake does not appear.

20-19

92. The department will allow a change of a selection even after approval, if shown to be for the best interest of the allottee, but such change can not be made, even before approval, except with the consent and under the direction of the department.

17-142

93. Indian parents not allowed to select lands within the ceded portion of the Sioux Reservation on which, after February 28, 1891, white settlers had established residence prior to such selection.

12-474

94. When an allottee dies after selection and prior to approval, the allotment will, upon approval, be confirmed to the heirs of the deceased allottee.

17-142

95. When an allottee dies before issuance of the trust patent, without heirs, all rights under the allotment become extinct, and the allotment should be canceled.

29-499

96. The terms of the agreement of May 20, 1890, with the Iowa Tribe of Indians, contemplate a personal selection on the part of a person entitled thereto, or a selection in behalf of one living at the time, and there is no provision in said agreement for making a selection on behalf of a deceased person.

30-532

97. The various acts of Congress authorizing allotments of Sioux lands contemplate allotments only to living per-

sons; and where one entitled to allotment dies without allotment having been made or selection therefor filed by him or in his behalf, the right perishes with him, and his heirs are not entitled to allotment based upon his right. 40-9

98. An allotment selection filed with the agent in charge during the lifetime and on behalf of a minor entitled to allotment under the acts of Congress providing for allotments of Sioux lands, although not scheduled or approved prior to allottee's death, saves the allotment right for the benefit of allottee's heirs. 40-4

99. In making allotments under section 6, act of June 5, 1906, all selections presented at a time when the same could properly be received for a party then in being should be accepted, although the party may die before the schedules are completed or approved. 35-145

100. The heirs of an allottee, under the act of May 23, 1872, if they so elect, may take an allotment of vacant land instead of ousting a subsequent allottee who improperly holds the lands covered by the certificate of the decedent. 13-314, 318

101. The heirs of an allottee, under the act of 1872, may perfect the allotment of their ancestor where this can be done; but where the lands have been allotted to others the heirs may select other lands of like quantity in lieu of those lost by the allottee. 13-318

102. The decease of an allottee holding a certificate under the act of May 23, 1872, does not warrant the assignment of the land to another, as the interest of the allottee descends to his heirs. 13-314

103. The allotment of Puyallup lands, and the investiture of the Indians with the rights of citizenship, do not remove said lands from the control of the President, and it therefore follows that in ascertaining who are the heirs of deceased Puyallup allottees the President may prescribe rules for the descent of said lands, and direct that the order provided by the laws of the State shall be applicable to said lands. (See 29-628.) 20-157

104. In determining the ownership of Puyallup allotted lands the rule of descent, as to the rights of white men who have married Indian women, is unaffected by

the act of August 9, 1888, as said act does not extend to allotments but is limited to tribal property. 29-628

105. Under the act of March 3, 1885, providing for allotment of Umatilla lands, the laws of Oregon, from the time of the issuance of trust patents, determine questions of descent in event of allottee's death; and by such laws the husband of a deceased allottee is entitled to an estate by courtesy in the allotted lands. 27-312

106. The allotments made to the Omaha Indians under section 6, act of August 7, 1882, are freehold estates that descend according to the statutes of Nebraska; so that on the death of the allottee his children take subject to the widow's right of dower, and on the death of such children, without issue, the estate goes to the widow, if she is the mother of such children. 27-399

107. In determining rights of inheritance under an allotment to a Citizen Pottawatomie of land in Oklahoma the law of descent in force in said Territory must govern; and under said law, where the widow of an allottee dies, all of her children, or their representatives, have a share in the interest held by the widow. 28-71

108. Lands within the ceded portion of the Pottawatomie Reservation in the Territory of Oklahoma, can not be allotted to nonreservation Indians under section 4, act of February 8, 1887. 13-310

109. The right to make selections for allotment either under the act of 1872 or 1887 continues for 30 days after the date of the act ratifying the agreement with the Citizen Pottawatomes. 13-318

110. Members of the Citizen Band of Pottawatomes are entitled to but one allotment, to be taken either under the act of May 23, 1872, or the act February 8, 1887. 13-312

111. The right to purchase land as a Citizen Pottawatomie under the act of May 23, 1872, can not be exercised by one who is not recognized as a member of the band. 13-314

112. Under the agreement with the Absentee Shawnees ratified March 3, 1891, failure to make selection or application therefor prior to said act will not defeat the right to an allotment. 13-316

113. The acceptance of an allotment under section 4, act of February 8, 1887, of land outside a reservation, precludes the recognition of a further allotment right within the reservation under the later act of March 3, 1891, and where such right has been recognized the allottee will be required to elect as between the two allotments. 20-46

114. The acceptance of a patent under an allotment right asserted in accordance with the act of March 3, 1891, precludes the recognition of a prior allotment allowed under the general allotment act of February 8, 1887. 21-271

115. A Cheyenne Indian who has received an allotment in Oklahoma under section 4, act of February 8, 1887, can not, while said allotment is outstanding, receive a further allotment in the Cheyenne and Arapahoe Reservation under the agreement ratified by the act of March 3, 1891. 13-185

116. An Indian settler on public land, claiming the right to allotment under section 4 of the act of February 8, 1887, is in practically the same situation and governed by the same rules, practice, and decisions applicable to white settlers on public lands. 38-553

117. Certificates of allotment issued under the treaty of April 29, 1868, may be surrendered and new allotments taken under the act of 1889. 13-307

118. Under section 8, act of March 2, 1889, all "Indians receiving rations" at a reservation, on the date of the President's order directing allotments thereof, are entitled to recognition. 24-330

119. The right of an Indian under section 13, act of March 2, 1889, to take as his allotment the lands upon which he is residing at the time said act becomes effective, if asserted in accordance therewith, cuts off all intervening adverse claims. 20-562

120. Allotment should be made where selections have been received under section 13, act of March 2, 1889, and there are no prior valid claims thereto; and in case of the allottee's death prior to the approval of the allotment patent should issue in accordance with section 8 of said act. 14-463

121. In case of application to select land covered by the prior selection of another under the treaty of April 29, 1868, on the ground that said selection has been abandoned, no action should be taken without notice to the prior claimant. 13-307

122. Under the treaty of April 29, 1868, the holder of a certificate of allotment is only entitled to exclusive possession of the land so long as he cultivates the same; hence selections under said treaty give no rights that descend to the heirs of allottees. 13-307

123. Right to allotments under article 7, treaty of March 19, 1867, not dependent upon settlement or residence, but on cultivation; and when the Indian has complied with such requirement his right vests at once, whether the certificate issues then or not. 16-427

124. The act of March 2, 1889, validates allotments made under the treaty of April 29, 1868, and directs the issuance of patents in the name of the allottee for the use of such allottee or his heirs. The marriage of a widow therefore does not affect the status of land covered by the certificate of her former husband. 13-307

125. Allotment rights of persons under article 6 of the agreement ratified May 1, 1888, became fixed on the ratification of said agreement, and the subsequent reservation, as a hay reserve, of lands surrounding those settled upon by members of a tribe signing said agreement, will not affect rights so protected. 27-455

126. Within the ceded portion of Oklahoma are not within the provisions of the general allotment act, but an allotment of such land made to protect an Indian's improvements excepts the land from entry and settlement. 14-235

127. There is no authority for allowance of allotments in severalty to children of the Sac and Fox Tribe of Missouri born after the completion of allotments to said tribe. 15-287

128. Under paragraph 4, article 2, agreement of December 19, 1891, providing allotments for certain Cherokees residing on ceded lands, the head of the family is required to take his allotment out of his improved lands. Members of his family are not so restricted, but have a preferred right to select such lands if

they so elect. If they select improved lands, they are then limited to the lands improved by the husband or father.

16-431

129. Allotments to the Cherokees provided for in agreement of December 19, 1891, are to be made by the people entitled to receive the land, subject to the Secretary's approval. 16 431

130. Cherokee citizens of Delaware blood are entitled to the same quantity of land in allotment as are those of Cherokee blood, with the proviso that if it be found there is not sufficient land to give each member of the nation as much as 160 acres in allotment, then the registered Delawares shall first be given the full quantity of 160 acres, the remainder of the land to be divided equally among the other members of the nation. 25-297

131. Selections made by the owners of improvements who do not reside within the ceded limits (agreement of Dec. 19, 1891), can not embrace tracts less in area than the smallest legal subdivision, and must be so taken as to include their improvements up to the limitation in acreage provided in said agreement. 16-431

132. The failure of the Columbia Reservation Indians to elect within a year whether they would stay on said reservation will not defeat their right to receive allotments in accordance with the agreement of July 7, 1883. 16-15

133. Allotments on the Swinomish Reservation may be made prior to the establishment of residence, it appearing that the lands selected are partly covered by tidal overflow, that the portion not so covered is cultivated by said allottees, and that when allotment is made they will be enabled to protect their lands from said overflow and secure permanent homes. 24-509

134. The children of those Indians who received allotments on the north half, or restored portion, of the Colville Indian Reservation who did not themselves receive allotments thereon, and also the children of such allottees born since the allotments were made, are on the same footing in respect to allotments on the south half, or reserved portion, of the reservation as the Indians residing there-

on, and equally entitled with them to allotments under the act of March 22, 1906. 35-220

135. The term "residence" in the provision of the act of April 28, 1904, restricting allotments thereunder to those who were legally residing upon the White Earth Reservation at the date of the act, and to those who may remove to and take up their residence on said reservation, should be given its ordinary meaning as recognized in legal parlance and construction, and, so construed, the act does not require that those already having legal residence on the reservation, although temporarily absent for any reason, must return thereto in order to receive the benefits of its provisions. 35-143

136. Thirteen allotments within Fort Custer Military Reservation recognized and protected. 5-226

137. The treaty of September 30, 1854, is not repealed, changed, or modified by the allotment act February 8, 1887. 9-392

138. The act of March 3, 1893, providing for the issuance of patents to the Stockbridge and Munsee Indians, under allotments selected in accordance with the treaty of 1856, did not contemplate the issuance of patents for lands that had prior thereto passed to the State under the swamp grant. 25-17

139. The riparian ownership of an allottee whose lands are adjacent to a meandered nonnavigable lake includes the lands to the middle of said lake. 14-156

140. In the exercise of the right of eminent domain a State may condemn for public purposes, under proper procedure, lands embraced within Indian allotments. 19-24

141. A decree of condemnation by a court of competent jurisdiction, in proceedings under the act of March 3, 1901, which provides for condemnation for public purposes of lands allotted in severalty to Indians, has the effect to vest title in fee, and the issuance of patent to the Indian allottee for the land covered by the decree is not necessary. 35 648

142. The provision in the act of March 3, 1893, that the United States district attorney shall represent "allotted Indians" in all suits at law or in equity, is

only applicable where the United States retains control over the allotted lands, or where the individual still maintains his tribal relation. 25-426

143. Timbered lands are not necessarily excepted from allotment, but may be allotted provided they contain sufficient arable area to support an Indian family and are, considering their location and the habits and subsistence of the Indians, suitable for a home for the allottee. 33-205

144. Under article 3 of the agreement with the Shoshone and Bannock Indians, and the act of June 6, 1900, ratifying said agreement, each member of a family of said Indians occupying and cultivating, under the sixth section of the treaty of July 3, 1868, any portion of the lands ceded by said act of June 6, 1900, is entitled to an allotment thereunder, restricted to the lands occupied at the date of agreement, not exceeding 320 acres for any one family. 31-146

145. Applications for allotment on the public domain filed under the act of March 3, 1909, and not approved at the date of the act of June 25, 1910, repealing the act of 1909, must be rejected. 40-196

146. The act of March 3, 1909, authorizing allotments to Indians on the public domain, was repealed by section 17 of the act of June 25, 1910, without a saving clause as to previously filed applications, and the department is therefore without authority to allow applications for allotment under that act subsequent to the repeal, notwithstanding they may have been filed prior to and were pending on that date. 40-14

III. Patent.

147. Patents issued under the act of 1887 should be in the form prescribed thereby. 5-520

148. There is no general authority for the issuance of patent to Indian allottees. 32-568

149. Patents for allotments under the treaty of September 30, 1854, should in all cases be in accordance with said treaty. 9-392

150. The authority conferred by the act of October 19, 1888, upon the Secretary to

accept the surrender of an Indian patent and issue another in lieu thereof extends to cases arising since said act as well as prior thereto. 12-184

151. A patent under the general allotment act and in accordance with the record passes title, and the department can not thereafter cancel said patent and issue another to correct an alleged error in the name of the patentee. (See 18-283.) 15-74

152. The department has authority to correct rolls of Indian allottees when it is shown that a mistake has been made, and to correct a patent issued on an erroneous roll to make it correspond with the correction, at least in cases where the patent has not been delivered to anyone claiming under it, or gone out of the possession of the department. 18-283

153. The sole heir of an allottee may surrender, under the act of October 19, 1888, a patent theretofore issued and take other land. 15-76

154. Procedure in case of surrender of patent under the act of October 19, 1888, and issue of new patent. 15-76

155. An allotment is not "made" within the meaning of the last paragraph of the act of May 8, 1906, until the issuance of first or trust patent thereon. 38-559

156. The second paragraph of the act of May 8, 1906, is not mandatory, requiring the Secretary to issue patent in fee to the heirs of a deceased allottee or to cause the land to be sold for their benefit, at the option of the heirs, regardless of their competency, but vests the Secretary with discretion to issue patent if he find the heirs competent or to sell the land for their benefit if he deem them incompetent. 38-422

157. The latter part of section 1, act of May 29, 1908, providing for patent to the heirs of a deceased allottee, if competent, or the sale of the land for their benefit in case of their incompetency, is operative in the State of Oklahoma. 38-422

158. Upon the death of an Indian allottee before the expiration of the trust period and before issuance of a fee simple patent, without having made a will, the Secretary is authorized by the act of June 25, 1910, to ascertain his heirs and, if competent to manage their own affairs, to

issue to them a patent in fee; but, if one or more of the heirs are incompetent, the land may be sold and the proceeds paid to such as are competent and held in trust for the use and benefit of such as may be incompetent, according to their respective interests; or, where one or more of the heirs are competent, their shares may, upon petition by them, be set aside and patents in fee issued to them, the shares of the incompetent heirs remaining subject to the trust declared in the patent to the deceased allottee. 40-120

159. Patent should issue in the name of the heirs generally, where the allottee dies prior to the issuance of patent. 17-142

160. All rights under a trust patent issued in the name of an allottee subsequent to his death, he having in his lifetime made selection, inure to his heirs. 36-114

161. An applicant for fee-simple patent under the second paragraph of the act of May 8, 1906, as heir of a deceased allottee, is required to show his competency. 38-427

162. There is no authority for the surrender of a patent and issuance of another for a larger amount to correct an error where title thereunder is in fee and the lands set apart for allotment have been restored to the public domain. 15-104

163. To correct a misdescription of lands in a trust patent, or under other circumstances where the best interests of the Indian require such action, the patentee may be permitted to surrender the patent, relinquish the lands covered thereby, and make a selection in lieu thereof, on due showing of a meritorious case. 25-442

164. The issuance of a trust patent on an Indian allotment terminates the jurisdiction of the Secretary over the lands, and he consequently has no authority, in the absence of special statutory provision, to cancel such patents for the purpose of correcting erroneous allotments. (See 30-258.) 24-214

165. The authority conferred upon the Secretary by the act of January 26, 1895, to cancel a trust patent, in order to correct a mistake in the allotment, is limited

to cases in which the alleged error is one of those specifically named in said act. 24-214

166. The issuance of a first or trust patent does not terminate the jurisdiction of the Secretary over the lands covered thereby as public lands, but until the issuance of the second or final patent he has authority, after due notice, to investigate and determine the legality of the allotment and to cancel the first or trust patent if based upon an allotment erroneously allowed. 30-258

167. The act of January 26, 1895, authorizing the Secretary to cancel patents issued on allotments, for the correction of mistakes therein, is limited in its operation to a specified class of trust patents, and is not applicable to a patent that conveys a title in fee simple. 24-285

168. The act of April 23, 1904, limits and defines the jurisdiction of the Secretary to cancel trust patents on Indian allotments, and he has no authority or discretion to correct errors in the issuance of such patents except as specifically authorized by that act. 38-556

169. Under the limitations of the act of April 23, 1904, the Secretary has no authority to cancel trust patents with a view to allowing the allottee to make homestead entry under section 2289, R. S. 33-310

170. An Indian homesteader holding title under a trust patent issued to him under the act of July 4, 1884, who at the time of making the entry had abandoned his tribal relation and was occupying the status of a citizen of the United States under the terms of section 6, act of February 8, 1887, may, upon application therefor, have the trust patent canceled and patent under the general homestead law substituted therefor. 35-80

171. In the absence of legislative authority therefor, first or trust patents can not be issued upon selections made by members of the Turtle Mountain Band of Chippewa Indians under the agreement ratified by act of April 21, 1904. 35-608

172. The trust period prescribed in trust patents issued on allotments under the act of February 8, 1887, begins to run from the date of the patent. 38-559

173. Where the first or trust patent issued upon an Indian allotment under the act of February 8, 1887, is surrendered for cancellation and the allottee selects other land upon which a new trust patent issues, the trust period will run from the date of the original and not from the date of the new trust patent. 38-558

174. The patents issued on allotments in the Cherokee Outlet were not conditional, but conveyed a fee-simple title, and the Department is consequently without jurisdiction over the lands covered by said patents. 24-285

175. In the issuance of patents on Chippewa allotments the reservation of the right of the United States to reservoir sites, as provided by act of June 7, 1897, should only be inserted in patents which cover lands included in the list of reservoir lands furnished by the Secretary of War. 26-116

176. In the absence of an express requirement in the agreement of July 7, 1883, between the United States and the Indians of the Columbia and Colville Reservations, and in the act of July 4, 1884, ratifying the same, that patents shall issue for the lands allotted thereunder, the Land Department is without authority to issue patents for such lands. 32-568

IV. Conveyance—Lease.

177. Purchaser under approved deed in accordance with the treaty of 1867 takes only such title as the grantor may have. 6-251

178. The approval of a deed under the treaty of 1867 should not be delayed for the settlement of conflicting rights asserted under conveyance from parties who had no interest in the land. 6-251

179. The approval of a deed required by section 23 of the treaty of February 23, 1867, is not for settlement of matters of inheritance or as a bar to the assertion of claims by the legal heirs, but to satisfy the Secretary that the original reservee or his heirs will receive the benefit of the grant. 6-251

180. Deed executed by the lawful heirs of the reservee should be approved under the treaty of 1867. 6-251

181. Deed for, will not be approved after the death of the grantor in case the decedent leaves heirs. (See 13-511.) 10-606

182. The department will not withhold approval of a deed on the sole ground of the death of the grantor after execution of the conveyance and prior to its presentation for approval. 13-511

183. Where an Indian deed, purporting to be executed by the sole heir of a deceased allottee, is submitted for the approval of the Secretary, and a protest against such action is made on behalf of one claiming under an alleged will left by the decedent, the department should take no action until after the validity or invalidity of said will has been determined by the local courts. 28-310

184. Deed executed by Shawnee does not convey title if not approved by the Secretary. 10-606

185. A purchaser from a Shawnee grantor under a deed approved by the department, without restriction or condition, takes the title clear of all conditions. 25-252

186. The act of August 15, 1894, modifying, as to the citizen Pottawatomie and Absentee Shawnee Indians, the inhibition against alienation contained in the general allotment act, does not authorize a sale of allotted lands held by a minor heir. 24-511

187. It is no objection to the approval of an Indian deed that a certified copy is presented for action, if the loss of the original is shown, or the custodian thereof refuses to part with its immediate possession. 26-25

188. The approval of an Indian deed, in the absence of an intervening adverse right, relates back to the date of said deed, and gives effect thereto from the time of its execution. 26-25

189. Where prior to approval of an Indian deed a conveyance adverse thereto is made, and approval thereof secured on the ground that such action would serve to protect parties holding under the first deed, the Secretary may approve said instrument, leaving the parties claiming thereunder to assert their rights in the courts. 26-25

190. On application for the approval of deeds executed by alleged Indian heirs, proof of heirship, and of the possessory right of the parties claiming under said conveyances, should be furnished before favorable action is warranted. 26-563

191. No conveyance of lands allotted to Peoria and Miami Indians under act of March 2, 1889, made by allottee or his heirs, within the period of inhibition in the statute, has the effect of transferring title until approved by the Secretary. 29-239; 30-457

192. The provisions of the act of May 27, 1902, authorizing the sale and conveyance of inherited lands by the heirs of a deceased allottee, apply to the heirs of all Indian claimants for portions of the public lands, to whom a trust or other patent containing restrictions upon alienation has issued, whether the claim was initiated under Indian homestead or Indian allotment laws. 32-657

193. Opinion expressed that the "liquor clause" now inserted in deeds by heirs of deceased allottees, prohibiting the sale or storage of liquor on the land conveyed, and providing for a reversion of title in case of violation of the prohibition, should be modified by a further provision "that the rights of mortgagees in good faith, their heirs and assigns, shall not be voided or jeopardized by such reversion." 34-412

194. Opinion expressed that it is inadvisable to insert in deeds by heirs of deceased allottees in the Yankton reservation the "liquor clause," prohibiting the sale or storage of liquor on the land conveyed and providing for a reversion of title in case of violation of the prohibition, the agreement with the Yankton Indians and the act of August 15, 1894, ratifying the same, being the proper authority which should be invoked for protection of the Indians in that respect. 34-415

195. There is no provision in the act of March 3, 1905, relating to townsites in the Osage reservation, authorizing the Secretary to insert in deeds for lots in such townsites a clause prohibiting the sale or storage of liquor on the premises conveyed and providing for a forfeiture of title in case of violation of the prohibition. 34-418

196. The special act of March 3, 1909, with respect to sales of lands by allottees

of the Quapaw Agency, supersedes the general act of March 1, 1907, and therefore in sales under the act of 1909 the allottee must retain at least 40 acres of his allotment as a homestead. 40-211

197. Heirs of an allottee under the agreement of July 7, 1883, between the United States and Chief Moses and other Indians of the Columbia and Colville Indian Reservations, ratified and confirmed by the act of July 4, 1884, may not under the general act of June 25, 1910, sell all the land embraced in the allotment, but must retain 80 acres as required by the special act of March 8, 1906. 40-212

198. The provisions of sections 1 and 2 of the act of June 25, 1910, are applicable to lands allotted to Indians in Minnesota and South Dakota, and sales of the interests of minor allottees and heirs in said States are to be made in accordance with such provisions and the regulations issued thereunder. 40-179

199. The act of June 25, 1910, taken in connection with the act of May 29, 1908, includes within its operation Minnesota and South Dakota, and excepts therefrom only Oklahoma; and, as to the States first named, said act supersedes or operates as a repeal by implication of the act of May 27, 1902, as to the sales of the interests of minor allottees and heirs. 40-179

200. Under section 3, act of February 28, 1891, an allottee may lease his allotment, under such regulations as may be prescribed by the Secretary, whenever by reason of personal disability he can not occupy said lands with benefit to himself. 18-497

201. Under a patent containing a provision, authorized by treaty, that the lands so conveyed shall not be alienated or leased without consent of the President, a lease is ineffective until approved by the President. 26-44

202. Under the special provisions in the act of June 7, 1897, the Sisseton and Wahpeton Indians may lease their allotted lands for farming and grazing purposes without supervision of the Secretary; but leases of land executed by said Indians for mining or business purposes require approval of the Secretary. 25-364

203. The act of February 28, 1891, authorizing Indians to lease lands they "have bought and paid for," includes the Indians on the Uintah Reservation who surrendered valuable rights to secure a permanent home on said reservation.

25-408

204. If a lessee holding under a farming and grazing lease, executed by an allottee in pursuance of the act of February 28, 1891, and acts amendatory thereof, fails to comply with the terms of the lease, the Secretary has the right to declare the expiration thereof; but such declaration, in the absence of a stipulation to the contrary in the lease, will not preclude judicial inquiry as to whether there was proper cause therefor.

30-114

205. The provisions of the act of June 7, 1897, relative to leases of Indian lands, are applicable only to allotments under the act of February 8, 1887, or other acts of Congress, where the title in fee has not passed to the allottee, and do not include a lease executed by the heirs of an Indian patentee to whom title has passed in accordance with treaty provisions.

26-45

V. Individual Tribes—Lands Opened.

A Bitter Root Valley.

See FLATHEAD, 273-285; RAILROAD GRANT, 594-596; RESERVATION, 87-88; TIMBER AND STONE, 27-29.

Cheyenne and Arapahoe.

See OKLAHOMA LANDS, 13-15, 28, 132-133, 138-139.

Cheyenne River and Standing Rock.

206. Proclamation and regulations governing opening of Cheyenne River and Standing Rock lands.

38-157, 160

207. Instructions of February 17, 1910, relative to indemnity school selections for Cheyenne River and Standing Rock lands.

38-455

208. Amendment of proclamation governing opening of Cheyenne River and Standing Rock lands.

40-56

Chippewa.

209. Circular of October 9, 1903, defining persons not qualified to make entry of ceded Chippewa lands.

32-281

210. Circular of May 10, 1904, under act of February 20, 1904, relating to sale of ceded portion of Red Lake Reservation.

32-600

211. Circular of May 27, 1904, defining persons not qualified to make entry of ceded Red Lake lands.

32-603

212. Instructions of August 5, 1904, relative to withdrawal of lot 1, section 10, T. 168 N., R. 35 W., Crookston, Minn., being ceded lands.

33-180

213. Circular of April 17, 1905, under act of March 3, 1905, relative to commutation of entries.

33-551

214. Instructions of March 3, 1911, under act of February 16, 1911, relating to Red Lake lands.

39-540

215. Instructions of April 6, 1910, under act of March 26, 1910, extending time for payment on Red Lake lands.

38-547

216. Instructions of July 31, 1906, under act of June 21, 1906, extending the time for payment by homestead settlers on purchases of lands in Indian reservations in Minnesota.

35-67

217. Circular of February 15, 1907, relative to ceded lands withdrawn pending completion of drainage survey under act of June 21, 1906.

35-428

218. Instructions of March 27, 1907, under act of March 1, 1907, relative to ceded lands withdrawn for drainage survey.

35-481

219. Circular of April 20, 1907, relative to agricultural lands.

35-532

220. Instructions of July 23, 1908, relating to agricultural lands.

37-61

221. Instructions of May 10, 14, and 17, 1910, relating to Chippewa lands.

38-590, 593, 594

222. Instructions of May 3, 1909, with respect to exchange of allotments under act of May 23, 1908.

37-665

223. Sale of ceded pine lands; regulations of June 14, 1898.

27-188

224. Instructions of March 13, 1909, withdrawing "cut-over" lands.

37-491

225. Regulations of August 26, 1898, to govern logging on ceded reservations under act of June 7, 1897.

27-353, 724

226. All Indians residing on White Earth Reservation are entitled to share in the proceeds of dead timber on that reservation disposed of under the act of June 7, 1897. 31-315

227. The township in the White Earth Reservation set apart for the Pembina Indians is, so far as the act of June 7, 1897, is concerned, a separate reservation, and the Indians residing thereon are entitled to the proceeds of dead timber taken therefrom under said act. 31-315

228. Under that portion of the instructions of July 23, 1908, governing the opening of certain Chippewa lands, which forbids intending settlers and entrymen to go upon the lands prior to the hour of opening, one who passes over a portion of such lands prior to the hour fixed, in order to take a position upon a tract held in private ownership within the area to be opened, with a view to thereby acquire a point of vantage from which to make settlement, and makes settlement therefrom immediately after the hour of opening, does not thereby acquire any right as against another who was standing in line at the local office and made entry for the same tract shortly after the hour of opening. 38-571

229. Cash entries of pine lands, made after due offering under section 5, act of January 14, 1889, and amendatory act of February 26, 1896, should not be canceled for inadequacy of consideration, where the appraised value of the land was paid, and there is no evidence of collusion between the purchaser and the Government appraiser, unless such inadequacy is so great as to amount to a fraud or imposition. 24-517

230. Directions given for withholding pine lands from sale until further orders, and the commissioner instructed to proceed with survey of said lands, and report. 24-517

231. The lands known as "White Oak Point Reservation" were added to the general Chippewa Reservation by Executive order of October 29, 1873, and Indians residing at White Oak Point should be regarded as residing on said general reservation, and entitled to remain and take allotments of agricultural lands anywhere upon said reservation, under the

proviso to section 3, act of January 14, 1889. 29-408

232. The provisions of the act of January 14, 1889, with respect to the disposition of the ceded lands, do not contemplate the allotment of lands that have been classified as "pine lands." 29-119

233. The right to select any particular tract for an allotment under the act of January 14, 1889, or under the general allotment act relating to reservation Indians, does not depend upon prior settlement and improvement. 29-408

234. Red Lake agricultural lands subject to homestead entry under the act of January 14, 1889, may be taken by persons entitled to make entry under the act of June 3, 1896, but such entries can not be commuted. (See 32-3.) 25-258

235. Lands opened to entry by the act of January 14, 1889, are subject to homestead entry and commutation under the act of June 3, 1896. 32-3; 39-456.

236. There is no provision in the act of January 14, 1889, whereby an allotment within the ceded portion of the Red Lake Reservation in Minnesota can be allowed, even though the claimant may have made improvements on the lands prior to the act. 26-275

237. Settlement on Red Lake opened to entry under act of January 14, 1889, prior to the time fixed therefor, does not disqualify the settler. 26-665

238. Prior to the act of January 14, 1889, the lands in the ceded portion of the Red Lake Reservation were appropriated to use as an Indian reservation, and were therefore not subject to allotment under section 4, act of February 8, 1887; and the special provisions for disposal of said lands made by the act of 1889 take them out of the class of lands open to allotment under said section. 26-275

239. The special provisions of the act of January 14, 1889, for disposition of the ceded lands, take them out of the class of lands subject to allotment under section 4, act of February 8, 1887. 29-132

240. The right of entry accorded in Article VI of the treaty of February 22, 1855, in the absence of an application for a specific tract, is no bar to subsequent congressional provision for the disposi-

tion of a part of the lands ceded by said treaty, if a sufficient quantity thereof to satisfy all claims under said Article VI yet remains subject thereto. 29-284

241. The right to make a second homestead entry accorded by the third proviso to section 6, act of January 14, 1889, extends only to persons whose first entry was made prior to said act. 26-647

242. The provision in section 6, act of January 14, 1889, with respect to second homestead entries, was intended to afford protection to persons who had made entries or filings prior to the act but failed to perfect title either before or after the act. 28-243

243. No rights could be acquired by settlement upon lands within the Red Lake Reservation, with a view to making homestead entry, prior to the opening of said lands. 34-94

244. No rights were acquired by settlement upon lands within the Red Lake Reservation prior to their opening, and where settlement was entirely upon lands selected with the approval of the Secretary prior to the opening by the Minnesota & Manitoba Railroad Co., under its grant made by the act of April 17, 1900, of right of way and lands for terminal facilities at the crossing of Rainy River, no entry can now be allowed of such lands. 34-619

245. In view of the act of February 9, 1903, which extended the townsite laws to the lands within the ceded Red Lake Reservation and authorized their occupation for townsite purposes prior to formal opening thereof under the homestead laws, the occupation of a portion of said lands as a townsite prior to and on the date they were opened to settlement and entry, prevented the attachment of any rights on that date under a settlement with a view to acquiring title under the homestead laws, covering the same land, initiated prior to occupation of the land for townsite purposes. 34-94

246. Commutation of a homestead entry of lands within that portion of the Red Lake Reservation opened under the act of February 20, 1904, may be allowed upon a showing that the entryman established actual residence within 6 months from date of entry; that such residence was

maintained for such period as added to the period intervening between the date of entry and the establishment of residence equals a period of 14 months; and that he was actually residing upon the land at the time of submitting such proof. 39-456

247. Residence upon White Earth Reservation is a condition precedent to the right to an allotment on that reservation under the acts of January 14, 1889, and April 28, 1904. 36-234

248. An Indian entitled to annuities under section 7, act of January 14, 1889, does not forfeit his right thereto by removing from the reservation and adopting the habits of civilized life. 36-234

249. The provision in the act of April 28, 1904, that allotments and patents on White Earth Reservation shall be in the manner and have the same effect as provided in the act of February 8, 1887, are in no wise affected by the act of May 8, 1906, and patents issued to such Indians should be in the form prescribed by the general allotment act. 36-210

250. The provision in the act of April 23, 1904, that upon cancellation of the patent issued upon a wrongful or erroneous allotment, as therein provided for, the lands shall not be opened to settlement for 60 days after such cancellation, operates to reserve such lands from all forms of disposition for the specified period. 36-289

251. Instructions of September 6, 1901, concerning commissions on agricultural lands commuted under the act of January 26, 1901. 31-106

252. All moneys accruing from disposal of agricultural lands under the acts of January 14, 1889, and January 26, 1901, should be deposited to the credit of the Indians. 33-72

253. The register and receiver are not entitled to commissions upon such moneys, but under the third paragraph of section 2238, R. S., they are entitled to the commissions therein specified upon the price of the land embraced in entries as excess acreage, and land involved in commuted entries, the same to be paid by the entrymen. 31-73

254. Section 5, act of June 27, 1902, appropriating a portion of the ceded lands

for experimental forestry purposes, was not repealed by the act of February 9, 1903, relating to townsites; and when said lands had been selected and segregated, in accordance with said section, they were excluded from any other appropriation by townsite entry or otherwise.

32-319

255. Promulgation of an order of withdrawal of lands for the purpose of carrying into effect the provisions of section 5, act of June 27, 1902, is not essential; but where prior to final action under said act, in the absence of such promulgation and in ignorance of the order of withdrawal, a townsite settlement was in good faith made upon lands included therein, under the act of February 9, 1903, the Land Department may modify the order of withdrawal and exclude therefrom the lands embraced in the townsite application.

32-319

256. Under the agreement of July 5, 1872, and the act of April 28, 1904, members of the Otter Tail Pillager band residing on White Earth Reservation are entitled equally with members of the Mississippi bands residing on said reservation to the additional allotment of 80 acres each provided for in said act.

33-298

257. The act of March 3, 1905, authorizes the purchase by the diocese of Duluth of 160 acres in the ceded reservation, but as that act does not recognize any rights as accruing to the diocese by virtue of applications theretofore made by it for the dedication, or purchase, of certain of said lands for mission or church purposes, any application by the diocese under said act can not be given relation to the earlier applications made prior to the act, to the prejudice of intervening adverse rights.

34-708

258. In contemplation of that portion of the instructions of June 23, 1905, which forbids intending settlers and entrymen to go upon the lands prior to the hour of opening, presence upon a public road running through the lands is equivalent to presence on the land, and one who in violation of the instructions makes settlement from such point of vantage immediately at the hour of opening is not entitled to assert a superior right by reason thereof as against another who made en-

try for the same tract one minute after the hour of opening.

36-323

259. A homesteader who in exercise of his right to make second entry under act of April 28, 1904, enters agricultural lands, opened under the act of January 14, 1889, may, by virtue of the act of March 3, 1905, extending the provisions of section 2301, R. S., to such lands, commute his entry by paying the price provided in the act of 1889, notwithstanding the provision in the act of 1904 forbidding commutation of entries allowed thereunder.

36-363

260. Claim of Turtle Mountain Indians too indefinite to justify withholding the lands from survey.

5-557

261. The act of April 21, 1904, does not limit the time within which Turtle Mountain Indians who may be unable to secure land upon their ceded reservation may take a homestead from any vacant public land belonging to the United States, as provided in said act, and the department has no authority to fix a date after which children born into the band shall not be entitled to such right.

36-105

262. Commissioner of General Land Office directed to instruct the proper local officers to consider applications of members of the Turtle Mountain band for allotment of public lands under the act of April 21, 1904, in two or more noncontiguous tracts, only when favorably recommended by the superintendent of the Fort Totten School.

36-452

263. In case a Turtle Mountain Indian made homestead entry of public land either prior or subsequent to ratification by the act of April 21, 1904, of the agreement with the Turtle Mountain band, said entry will be held and treated as a selection under said agreement and to exhaust his rights thereunder.

39-508

Coeur d'Alene.

264. Proclamation and regulations governing opening of Flathead, Coeur d'Alene, and Spokane lands.

37-698, 700

265. Amendment of proclamation governing opening of Coeur d'Alene and Flathead lands.

40-57

266. Lands formerly within the Coeur d'Alene reservation and restored to entry

by act of March 3, 1891, are not subject to soldiers' additional entry. 35-159

Columbia.

267. Under the provision of the act of February 25, 1907, that all lands in the former Columbia reservation embraced in applications to make entry under section 2306, R. S., "which were presented before the lands covered by such applications were withdrawn under the reclamation act, are hereby declared to be subject to such entries," the point to which action had been proceeded with under departmental regulations respecting any such application at the time of the passage of the act is not material, the only limitation being that the application should have been presented before the lands covered thereby were withdrawn under the reclamation act. 36-130

Colville.

268. Colville lands opened to settlement; instructions of April 12, 1900. 29-661

269. Rules and regulations of August 11, 1898, under the act of July 1, 1898, authorizing the sale of timber on the portion of the Colville Reservation vacated by the act of July 1, 1892. 27-366

270. No part of the Colville Reservation restored to the public domain by the act of July 1, 1892, should be opened to settlement and entry prior to the survey of the entire tract, unless the Indians choose to take their allotments prior to the completion of the survey; but if they do so elect, then all the lands so restored to the public domain may be opened to settlement, though a portion of them may be unsurveyed. 26-497

Comanche, Kiowa, and Wichita.

See OKLAHOMA LANDS, 173-224.

Creek and Seminole.

See OKLAHOMA LANDS, 26, 141; SEMINOLE LANDS.

Crow.

See SIOUX.

Devils Lake.

See SISSETON.

Flathead.

271. Proclamation and regulations opening Flathead lands. 37-698, 700; 40-57

272. Instructions of December 11, 1909, relative to Flathead lands. 38-341

273. Preference right of Indians to lands in Bitter Root Valley recognized. 1-368

274. The 15 townships set apart for the Flatheads under act of June 5, 1872, did not include lands lying in part below Lolo Fork of the Bitter Root River. 12-49

275. The act of June 5, 1872, providing for survey and disposition of 15 townships "above the Lolo Fork" contemplated entire townships, irrespective of the time when said survey might be made, either in whole or in part. 25-266

276. The second section of the act of February 11, 1874, extending the homestead laws to such settlers within said 15 townships "as may desire to take advantage of the same," does not operate to repeal the general provisions for the disposition of said lands made by act of June 5, 1872. 25-266

277. The time allowed settlers on Bitter Root Valley lands, whose settlement is made after the act of 1872, to perfect title under said act, and the amendatory act of 1874, begins to run from date of settlement. 25-266

278. Under section 10, act of March 3, 1891, with respect to disposal of Indian lands, the general repeal of the preemption law, by section 4 of said act, does not affect the disposition of Bitter Root Valley lands under the acts of 1872 and 1874. 25-266

279. The acts of June 5, 1872, and February 11, 1874, constitute the only authority for disposal of lands in the 15 townships in the Bitter Root Valley opened by the act of June 5, 1872, and said acts specifically provide for their disposal to actual settlers only; hence said lands are not subject to timber and stone entry. 31-243; 32-280

280. Lands in the Bitter Root Valley above Lolo Fork, opened to settlement by

the act of June 5, 1872, are not subject to disposal under the timber and stone act; but where such lands have been sold under the latter act, and patents have issued therefor, no rights will be recognized as initiated against such lands by an application to purchase the same under the act of June 5, 1872, while the patents therefor are outstanding. 32-492

281. The declaration by Congress, in the acts of June 5, 1872, and February 11, 1874, that the lands in the Bitter Root Valley above Lolo Fork should be disposed of only by sale to actual settlers or by homestead entry, did not take them out of the category of "public lands" so as to prevent the Land Department from withdrawing said lands for forestry purposes prior to their disposal under said acts. 32-468

282. Lands within the Bitter Root Valley above Lolo Fork of the Bitter Root River, ceded to the United States under the treaty with the Flathead and other Indians, ratified March 8, 1859, are not subject to entry under the mining laws. 35-444

283. A married woman, not the head of a family, is not qualified, under section 2, act of June 5, 1872, to make entry of lands in the Bitter Root Valley. 34-313

284. Notwithstanding the act of June 5, 1872, opening the lands in the Bitter Root Valley above Lolo Fork to settlement, fixed the price thereof at \$1.25 per acre, the even-numbered sections falling within the primary limits of the grant to the Northern Pacific Railroad Co. were, under section 2357 of the Revised Statutes, properly rated at \$2.50 per acre. 38-319

285. Patented Indian lands in the Bitter Root Valley, authorized to be sold by the act of March 2, 1889, should not be sold for less than the appraised value of the land and improvements thereon. 30-292

Fond du Lac.

286. No deduction in acreage or payments will be made in entries of Fond du Lac Indian lands traversed by the Northern Pacific Railroad Co.'s right of way because of the area embraced in such right of way. 39-565

Fort Berthold.

287. Proclamation and regulations opening Fort Berthold lands. 40-151, 154

288. Executive order of April 4, 1912, respecting entries of Fort Berthold lands. 40-575

289. Regulations of April 16, 1912, respecting contests of entries of Fort Berthold lands. 40-576

290. Instructions of March 6, 1907, under act of February 18, 1907, relative to certain patents and entries in Fort Berthold Reservation. 35-451

Fort Hall.

291. Instructions of June 30, 1904, under act of March 30, 1904, relative to opening of ceded lands in Fort Hall Reservation. 33-80

Grande Ronde.

292. Circular of May 19, 1904, under act of April 28, 1904, relative to sale of lands in Grande Ronde Reservation. 32-636

293. Circular of May 31, 1905, under act of April 28, 1904, relative to sale of Grande Ronde lands. 33-586

Gros Ventre and Other Lands.

294. Instructions of April 8, 1911, under act of March 3, 1911, relating to Gros Ventre and other Indian lands. 40-16

295. Lands within that portion of the ceded Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Reservation established by Executive order of April 13, 1875, and opened to entry by and in accordance with the act of May 1, 1888, are not subject to selection as indemnity by the Northern Pacific. 36-7

296. Lands formerly within the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Reservation and opened to entry under section 3, act of May 1, 1888, are subject to selection by the State on account of the grant for public buildings made by the act of February 22, 1889. 36-75

297. Lands in the former Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Reservation, opened under the act of May 1, 1888, "to the operation of the laws

regulating homestead entry, except section 2301 of the Revised Statutes, and to entry under the townsite laws and the laws governing the disposal of coal lands, desert lands, and mineral lands; but are not open to entry under any other laws regulating the sale or disposal of the public domain," are subject to appropriation under section 2306, R. S., by location of soldiers' additional right. 39-561

Kansas.

298. Sec. 4, act of March 16, 1880, allowing entry without actual residence on the land, refers only to tracts on the boundaries of the Kansas Indian lands contiguous to other lands (not Kansas Indian lands) on which the entryman was actually residing and to which he held the legal title at date of the act. 2-181

Second entries are not permissible beyond the limit of 160 acres. 2-184

299. The "actual settlers" contemplated by the law are those who have made *bona fide* residence on and improvement of the land, except, under the act of March 16, 1880, land contiguous to claims on which they have made their homes. 2-187

Entry of Kansas trust lands subject to contest. 9-329

Kickapoo.

See OKLAHOMA LANDS, 10, 103; SCHOOL LAND, 255-256.

Kiowa, Comanche, and Apache.

See OKLAHOMA LANDS, 173-224.

Klamath.

300. Instructions of February 20, 1894, relative to disposition of lands in Klamath Reservation. 18-166

301. Instructions of January 4, 1901, relative to survey of lands in Klamath Reservation and selection of swamp lands therein by the State. 30-395

302. Lands in Oregon reserved under the treaty concluded October 14, 1864, with the Klamath and other tribes of Indians are excepted from the operation of the swamp-land grant to said State. 32-664

303. A settler on lands in the Klamath River Reservation prior to the act of June 17, 1892, opening said lands to entry, may be allowed to purchase, in the absence of an adverse claim, though his application is not filed within the statutory period. 25-43

304. The preferred right of entry accorded actual settlers by the act of June 17, 1892, opening the Klamath River Reservation, does not extend to lands returned as swamp and so represented on the township plat. 24-26

Lemhi.

305. Instructions of June 4 and 11, 1909, opening Lemhi lands. 38-25, 27

Lower Brule.

306. Proclamation of August 12 and regulations of August 13, 1907, governing opening of Lower Brule lands. 36-52, 54

Mille Lac.

307. Acquired from certain Chippewa bands by treaty of March 20, 1865, withheld from sale by act of July 4, 1884. 5-541

308. The department has no authority to dispose of lands acquired from the Mille Lac Indians by the treaty of 1864. (Mar. 20, 1865.) 5-102, 541

309. The words "on the White Earth Reservation," in the act of July 4, 1884, not consistent with the otherwise clearly expressed intention of said act. 5-541

310. The prohibition against the final disposition of lands included within the act of July 4, 1884, extends to entries made prior to said act. 8-409

311. The approved cession by the Chippewa band of the Mille Lac Indians of their right of occupancy is a condition precedent to the right of proceeding, under section 6, act of January 14, 1889, with entries made on lands covered by said right. (See 12-52.) 10-3

312. The "further legislation" required by the act of 1884 prior to disposition of Mille Lac lands is provided in the act of January 14, 1889, and said act is now operative, as the Indian right of occupancy

has been ceded and such action received the approval of the President. 12-52

313. The proviso of section 3, act of January 14, 1889, does not apply to the particular lands on which the Mille Lacs, before their last agreement, were allowed to live under successive departmental regulations. 12-55

314. Formerly occupied by the Mille Lac Indians are not subject to disposition under the general land laws, but under the special provisions of the act of January 14, 1889. 14-497

315. The act of January 14, 1889, did not contemplate the disposition of any of the lands opened to settlement thereby except in the manner and for the purposes therein provided, to the end that the money arising from such disposal should inure to the benefit of the Indians. 22-388

316. Mille Lac lands are not subject to disposal under the general homestead law, but under the act of January 14, 1889. 22-499

317. An entry of Mille Lac, made under the general land laws, and prior to July 4, 1884, is protected under the proviso to section 6, act of January 14, 1889, with a view to its final disposition under the laws in force at the time of its allowance. 22-500

318. A preemption filing for Mille Lac lands, authorized by the rulings in force at the time of its allowance, is within the spirit and intent of the second proviso to section 6, act of January 14, 1889, and is accordingly protected thereby, if subsisting at the date of said act. 22-578

319. The joint resolution of December 19, 1893, confirming *bona fide* filings and entries within the Mille Lac reservation, allowed between January 9, 1891, and the receipt of notice at the local office of the departmental decision of April 22, 1892, operates to validate settlement rights covered by filings or entries thus allowed, whether initiated before or after January 9, 1891; hence, as between parties claiming under said legislation, priority of settlement may properly form a material issue. 24-489

320. A homestead entry of Mille Lac lands, made after receipt at the local office of the departmental ruling of April 22,

1892, and hence not confirmed by the joint resolution of December 19, 1893, may be submitted for equitable action, it appearing that the claim of the entryman was initiated and maintained in good faith at a time when the lands were open to homestead entry. 26-619

321. A homestead entry of Mille Lac lands made during the period specified in the joint resolution of December 19, 1893, is by such resolution confirmed, subject only to due compliance with the provisions of the general homestead law, and to such payments as may be required thereunder. 25-455

322. In neither the joint resolution of December 19, 1893, nor that of May 27, 1898, is there any absolute confirmation of entries theretofore made, but only a conditional confirmation, dependent upon the requirement that such entries shall be made regularly in accordance with the public-land laws. 30-125

323. By the joint resolution of May 27, 1898, all public lands formerly within Mille Lac Reservation are declared open to entry under the settlement laws. 27-526

324. Lands subject to disposal under the joint resolution of May 27, 1898, are not subject to location with Sioux half-breed scrip. 32-150

325. Under a filing for Mille Lac lands protected by the act of 1889, wherein the right to make final proof is suspended by the provisions of the act of July 4, 1884, it is incumbent upon the preemptor, during such period of suspension, to maintain his possessory right by such acts as will negative an inference of abandonment, where the rights of an intervening adverse claimant are involved. 22-578; 26-19

326. An application to make entry under a power of attorney that is in effect an attempted transfer of a soldiers' additional right, and is properly rejected for "reasons sufficient in law," is not within the departmental order of March 10, 1877; nor does the subsequent allowance of such application bring the entry within the protection accorded valid homestead entries by the act of January 14, 1889. 17-512

Navajo.

327. Land reserved for the Navajo Indians by Executive order of April 24, 1886, not subject to preemption. 7-324

328. Instructions of July 21, 1902, relative to settlers on Navajo Reservation, under act of July 1, 1902. 31-381

Nez Perce.

329. Nez Perce lands opened to settlement; instructions of November 4, 1895. 21-382

330. Circular of March 27, 1909, under act of February 6, 1909, relative to sale of isolated tracts in Nez Perce Reservation. 37-535

331. Nez Perce lands are not subject to selection under the exchange provisions of the act of June 4, 1897. 32-374

332. The commutation provision in section 2301, R. S., is applicable to Nez Perce lands, but "the minimum price" provided for therein must, under the act of May 17, 1900, be determined without reference to that provision of the act of August 15, 1894, which requires each settler to pay \$3.75 per acre for said lands, and as though no such provision had ever been made. 30-196

333. Lands within the former Nez Perce Indian Reservation, opened under section 5 of the act of February 8, 1887, to "actual settlers," and under the act of August 15, 1894, to settlement and disposal under the homestead, townsite, timber and stone, and mining laws only, are not subject to appropriation by location of soldiers' additional rights. 40-113

Oklahoma.

See OKLAHOMA LANDS.

Omaha.

334. On entry of land within the former Omaha Reservation the purchaser is entitled to one year in which to make first payment. 5-708

335. A claim for Omaha land based on settlement and filing made after the time fixed by the proclamation under the act of August 7, 1882, and before the act of August 2, 1886, is within the second pro-

viso of the latter act; and the first payment thereon is not due until two years from the act. 7-189

336. There is no statutory inhibition against the sale and transfer of the right of purchase accorded by the act of August 7, 1882. 28-183

337. Declaration of forfeiture and order for public sale under section 3, act of May 15, 1888. 9-326

338. A purchaser whose claim is forfeited for nonpayment, may complete his payments, in the absence of adverse rights, where it appears that he had tendered the necessary sum prior to the judgment of forfeiture. 12-111

339. Although a purchaser under the act of August 7, 1882, may be in default, he is not divested of his right of purchase until a forfeiture has been declared by the Secretary. 28-183

340. Section 2, act of August 7, 1882, which defines the class of persons entitled to purchase, does not refer to settlers under the homestead laws; hence the act of May 17, 1900, which is expressly limited to "settlers under the homestead laws of the United States," has no application to said lands. 30-82

341. Purchaser who has taken less than 160 acres and complied with the law, may enter contiguous land at the appraised price. 12-325

342. Omaha lands sold at public sale and then relinquished can only be resold after new advertisement and reoffering. 13-529

Osage.

See ALIENATION, VI; CONFIRMATION, 70-71, 94, 164, 181; FILING, IV; FINAL PROOF, XIII; RESIDENCE, V; SETTLEMENT, III.

343. Osage trust lands; circular of April 26, 1887, with respect to entry. 5-581

344. Instructions of February 15, 1892, for offering at public sale Osage lands that have not been paid for in accordance with the terms of the sale. 14-172

345. The Secretary has full authority to prescribe regulations for the sale of Osage. 6-111; 9-353

346. Entry of Osage land on first payment and requisite proof operates to segregate the land covered thereby. 13-524

347. A claimant under the act of May 28, 1880, acquires no right as against the United States until he has made final proof and paid or tendered the purchase money. 9-353

348. Entry of Osage land not susceptible of confirmation under the proviso to section 7, act of March 3, 1891, till the lapse of two years from final payment. 13-529

349. When a claimant under the act of May 28, 1880, submits proof of his qualifications, shows compliance with law, and makes first payment, his right is vested, subject only to the lien of the Government for the unpaid purchase money. 18-441

350. The only conditions prerequisite to entry under section 2, act of May 28, 1880, are that claimant should be an actual settler and have the qualifications of a pre-emptor. 5-303, 442, 537; 6-103, 175; 7-251; 9-98; 10-23, 36

351. That the claimant is in fact an "actual settler" must be shown by residence following the alleged act of settlement and preceding entry. 10-23

352. A single woman who has the qualifications of a pre-emptor and after due compliance with law and submission of final proof marries is not by such marriage deprived of the right to have her entry allowed. 11-396

353. The purchaser must show that he is an actual settler by residence following the alleged act of settlement, and the proof required of such fact is no less in degree than that required under the pre-emption law. 11-216, 259, 275, 319

354. Requirement as to six months' residence prior to final proof not applied with the same rigor to settler on Osage land as to a pre-emptor of other land, but the acts of such settler must show clearly an intention of making the land his home. 11-302

355. Residence for six months preceding entry not required, but *bona fide* settlement must be shown. 5-581; 6-783

356. One who settles in collusion with and for the benefit of another is not an "actual settler" under the act of May 28, 1880. 8-173; 10-39

357. An "actual settler" under the act of May 28, 1880, is one who goes upon the land with *bona fide* intent of making it his

home under the settlement laws and does some act indicative of such intent

4-340; 7-277; 8-173; 11-268, 319

358. Where one having the qualifications of a pre-emptor makes a legal Osage filing he can not make a second. 7-30

359. Settlement subsequent to the act of May 9, 1872, does not authorize purchase, if prior thereto the settler had perfected an entry of such land. 11-372

360. Section 2285, R. S., does not exempt the settlers named therein from the specified restrictions of the preemption law, except as to lands held by settlement on May 9, 1872, and the purchase of such lands exhausts the preemptive right either as to Osage or other land. 11-372

361. Second entries of Osage land to which at the time there were no adverse claims are confirmed by section 23, act of March 3, 1891, if compliance with law is otherwise duly shown. 13-299, 700

362. An entry of Osage land under the act of May 28, 1880, is a preemption entry within the meaning of section 7, act of March 3, 1891, and subject to confirmation thereunder. 12-442; 13-58

363. Purchase by filing on Osage land under the act of May 28, 1880, is the exercise of a preemptive right. 5-537; 6-103

364. In entry under the act of May 28, 1880, the oath required of a pre-emptor is not applicable. 5-303, 537

365. Purchaser not required to make affidavit before entry that he has not made any contract whereby the title he may obtain will inure to the benefit of another. 5-310; 7-34; 8-173

366. One who quits or abandons residence on his own land to reside on Osage land in the same State is disqualified to purchase. 11-164

367. General preemption laws not applicable to Osage entry. 5-303, 537

368. Purchaser may, after compliance with law and issuance of certificate, sell the land or remove therefrom. 9-98

369. The department may withhold from Osage filing lands within an abandoned military reservation, pending sale of Government buildings thereon. 10-602

370. Commutation allowed of homestead entry for trust lands lying within the for-

mer limits of Fort Dodge Military Reservation. 4-145

371. Cash paid on commuted homestead entry for trust lands to be placed to the credit of the Indians. 4-148

372. The provisions of the act of May 28, 1880, with respect to the qualifications of a purchaser, were not repealed by the act of December 15, 1880, authorizing disposal of part of Fort Dodge Military Reservation. 6-539

373. That part of the Fort Dodge Military Reservation which embraced Osage trust lands and was relinquished by act of December 15, 1880, became subject thereby to disposal to purchasers that are actual settlers and have the qualifications of a preemptor. 6-175

374. The establishment of a military reservation on Osage trust lands did not impair the trust imposed by the treaty of 1865, but postponed its execution. 6-175

375. The sufficiency of residence shown under the act of August 11, 1876, subject to review by the General Land Office. 3-366

376. The delay of a party in perfecting title, and the intervention of an adverse claim, will not defeat the right of such party, where said delay appears to have been caused by the loss in transmission of an appeal affecting another tract included in the same filing, and the intervening claimant fails to show due compliance with law on his own part. 25-162

377. At a public sale of, the holder of a tax certificate is entitled, within the business hours of the day of such sale, to make the deferred payments, and this right can not be defeated by an unauthorized regulation of the local office. 18-569

378. Claimants in default with settlement and improvement may purchase the tracts within the 60 days limited in section 1, act of May 28, 1880. 2-572

379. A purchaser in default as to final payment may be permitted to make such payment when no declaration of forfeiture has been made, and no adverse claim exists. 18-399

380. The department has authority to cancel entries of Osage ceded lands where default exists as to payment of the purchase price. 24-6

381. Gross amount of proceeds to be paid into the Treasury; no part thereof can be withheld as compensation for the register and receiver or for clerk hire. 1-520

382. The general laws prohibiting the introduction of intoxicating liquors into the Indian country are applicable to towns in the Osage Reservation. 34-419

Ottawa and Chippewa.

383. Lands valuable mainly for pine timber can be disposed of only at public offering at the minimum price of \$2.50 per acre. 2-190

Otoe and Missouri.

384. Instructions of June 1, 1900, under act of April 4, 1900, relating to Otoe and Missouri lands. 30-41

385. The settlement required of a purchaser must be in good faith and permanent in character. 11-546

386. An entry of Otoe and Missouri land is a preemption entry within the intent of section 7, act of March 3, 1891. 13-78

387. The refusal of the Indians to consent to the relief contemplated by the act of March 3, 1893, for the benefit of purchasers, makes it the duty of the department to enforce prior legislation and cancel entries in default of payment. 21-55

388. The authority conferred on the Secretary by the act of March 3, 1893, to revise and adjust the sales of lands made under the act of March 3, 1881, is not exhausted by an attempted revision and adjustment that has failed of consummation. 28-424

389. The Secretary has authority under the law, and by virtue of his supervisory power, to cancel the entries of purchasers in default in the matter of deferred payments. 23-143

390. Directions for notice to all purchasers that opportunity will be given for payment of arrears with a rebate of 10 years' interest, and that on failure to settle in such manner their entries will be canceled. 23-143

Pawnee.

391. Drafts not received in payment for Pawnee. 1-522

392. Purchasers who have not made payments of principal and interest, as required by the act of April 22, 1890, but have since the time fixed in said statute tendered payment, may be permitted, in the absence of a declaration of forfeiture, to complete their purchases. 17-490

393. Forfeiture declared as to all entries in default, with directions for new sale. 17-490

Pine Ridge.

See SIOUX.

Pottawatomie.

See OKLAHOMA LANDS, 8, 13, 134.

394. An appraisal of unallotted Pottawatomie lands as provided for in the treaty of November 15, 1861, is not called for, if it appears there is a *bona fide* claimant therefor who is within the protective clause of the subsequent treaty of February 27, 1867. 24-513

395. The preferred right to purchase the unallotted Pottawatomie lands, conferred by the treaty of February 27, 1867, upon the Atchison, Topeka & Santa Fe Railroad Co. is not defeated by failure to make payment for a tract of such land within the period specified in said treaty, where said tract was unsurveyed and hence could not be conveyed by the Government; and the company having attempted to convey such tract, may, for the benefit of the transferee, perfect title thereto by making the proper payment therefor. 26-245

Red Lake.

See CHIPPEWA.

Rocky Boy.

396. Instructions of December 10, 1909, and January 7, 1910, relative to opening of Rocky Boy lands. 38-359, 360

Rosebud.

See SIOUX.

Round Valley.

397. Instructions of November 7, 1905, relative to lands in Round Valley Reservation opened to settlement and entry. 34-248

Sac and Fox.

See OKLAHOMA LANDS, 27, 75, 102, 129.

Santee Sioux.

398. Directions for opening to entry lands formerly embraced in reservation. 3-534

399. The purpose of that part of the Executive order which provided that certain lands should be subject to settlement and entry May 15, 1885, was to fix a time when claims could be made of record and the rights of claimants determined. 9-89

400. Within the Santee Sioux Reservation remaining unselected or unallotted on April 15, 1885, were that day restored to the public domain by force of the previous Executive order. 9-89

Seminole.

See OKLAHOMA LANDS, 26, 141; SEMINOLE LANDS.

Seneca.

401. Application by Senecas for sale of a certain section 16 in Ohio denied, as the Government has fully performed its trust under the treaty of February 28, 1831. 6-159

Shoshone and Wind River.

402. Proclamation of June 2, 1906, opening Shoshone or Wind River lands. 34-640

403. Regulations of June 4, 1906, governing opening of Shoshone or Wind River lands. 34-645

404. Instructions of January 25, 1907, under act of January 17, 1907, extending time for establishment of residence on Shoshone or Wind River lands. 35-397

405. Circular defining persons not qualified to enter Shoshone or Wind River lands. 34-647

Siletz.

406. Instructions of May 20, 1895, opening Siletz, under act of August 15, 1894. 20-476

407. The act of August 15, 1894, opening Siletz, constitutes the only authority for the disposal of such lands, and provides for their disposal only under the mineral and townsite laws or to actual settlers; hence said lands are not subject to sale as isolated tracts. 30-536

408. Under the act of August 15, 1894, a homestead entryman of Siletz lands is required to show, as a prerequisite to patent, that he has established and maintained actual residence for a period of three years. 38-179

409. Congress, with full knowledge that the Siletz lands were heavily timbered, having nevertheless limited disposal thereof to appropriation under the homestead, townsite, and mining laws, no presumption of bad faith arises from the mere fact that a tract of such lands entered as a homestead may be covered by a dense growth of timber. 38-191

410. The protest of Special Agent Hobbs, of November 11, 1903, challenging the validity of certain homestead entries in the former Siletz Reservation, being within two years after issuance of final certificates upon such entries, takes the entries out of the operation of the proviso to section 7, act of March 3, 1891. 39-437

411. Instructions of April 19, 1911, under act of March 4, 1911, respecting homestead entries of Siletz Indian lands. 40-38

412. Where the local officers were directed to cancel upon their records a homestead entry in the former Siletz Indian Reservation, as the result of a contest, and the contestant in pursuance thereof filed his application to enter and settled upon the land, such application and settlement are sufficient to except the land from the operation of the President's proclamation of withdrawal of July 13, 1910, under the act of June 25, 1910, notwithstanding notation of the cancellation of the former entry and allowance of contestant's application were suspended on account of proceedings in the courts; and the entry subsequently allowed upon contestant's application is valid and prevents reinstatement of the former canceled entry under the act of March 4, 1911. 40-393

413. Lands in the Siletz Reservation are not subject to sale as isolated tracts. 30-536

Sioux.

414. Circular of March 25, 1890, under act of March 2, 1889, providing for the disposition of Sioux lands. 10-562

415. Circular of March 28, 1899, with respect to payments under the act of March 3, 1899. 29-598

416. Certificates of deposit for survey not received in payment for Sioux. 1-522

417. Circular of April 21, 1900, under section 21, act of March 2, 1889. 30-354

418. The price of Sioux lands is fixed by the date of the first entry, and settlers on land once entered and then abandoned are required to pay the same amount per acre as the first entryman. 10-328

419. Under section 21, act of March 2, 1889, settlers are required to pay for the land when final proof is made. 10-328

420. On the commutation of a homestead entry of Sioux lands, restored to the public domain under the act of March 2, 1889, the entryman must pay the minimum price for the land, in addition to the payments required under said act of 1889. 27-72, 395

421. The inadvertent inclusion of a tract of Sioux lands in a homestead entry, at a time when the land was rated at 75 cents per acre, which entry was subsequently amended to describe in lieu of the tract entered the tract actually settled upon and intended to be taken, does not have the effect to fix the price of the erroneously entered tract at 75 cents, the status thereof remaining the same with respect to price as though the erroneous entry had never been made. 38-313

422. In view of the fact that the practice, in the administration of the acts of March 2, 1889, and August 15, 1894, respecting the commissions to be paid the register and receiver by the entryman, under the act of March 2, where he commutes his entry, and of requiring no commission on the commutation of an entry made under the act of August 15, is of long standing and has been uniformly adhered to, and that the administration of both these acts is now largely completed, no change in such practice will be made. 31-250

423. The preference right of entry on Sioux lands conferred by section 23, act of March 2, 1889, is limited to the lands originally claimed by the settler. 14 352

424. Agricultural lands formerly within Sioux Reservation must be disposed of under the homestead law. 11-231

425. Lands within the Great Sioux Reservation, restored to the public domain by the act of March 2, 1889, are subject to disposition only under the homestead law for the benefit of the Indians. 26-347

426. Under section 21, act of March 2, 1889, opening to settlement and entry the Great Sioux Reservation, the lands are not subject to disposition under the desert-land laws. 29 541

427. The provisions in the act of March 2, 1889, limiting the disposal of lands within the ceded portion of the Great Sioux Reservation to actual settlers under the homestead law and the laws relating to townsites, does not reserve said lands from the operation of the act of January 13, 1897, authorizing the use of public lands for reservoir purposes. 31-246

428. Adjustment of certain entries and settlement claims made under the act of March 3, 1863, on incorrect survey. 3 288

429. Proclamation of May 13, 1904, under act of April 23, 1904, opening to entry lands in Rosebud Reservation. 32 622

430. Circulars of May 23, 1904, relative to opening lands in Rosebud Reservation. 32-628, 629

431. Instructions of July 19, 1904, relative to nonmineral affidavit in making entry of lands in Rosebud Reservation. 33-124

432. Circular of September 19, 1904, relative to disposition of Rosebud lands after expiration of "60-day period." 33 255

433. Instructions of February 9, 1904, relative to extension of time within which to establish residence upon Rosebud lands. 33-408

434. Instructions of January 31, 1905, relative to disposal of a tract of land in Great Sioux Reservation. 33-381

435. Proclamation, regulations, and instructions governing opening of Rosebud lands. 37-122, 124, 131, 278; 393, 442

436. Instructions of April 5, 1910, under act of March 26, 1910, extending time for payment on Rosebud Indian lands. 38-544

437. Proclamation and regulations opening Pine Ridge and Rosebud lands. 40-164, 167

438. Paragraph 18 of regulations of June 29, 1911, governing opening of Rosebud and Pine Ridge lands. 40-518

439. Instructions of September 8, 1911, under act of August 17, 1911, extending time for payment on Rosebud lands. 40-267

440. Instructions of January 22, 1912, governing State selections of Rosebud lands. 40 390

441. Executive order of February 26, 1912, respecting opening of Rosebud and Pine Ridge lands. 40-517

442. Circular of May 24, 1904, under act of March 30, 1904, authorizing State of South Dakota to select school and indemnity lands in ceded portion of Great Sioux Reservation. 32-656

443. The act of April 23, 1904, providing for the disposition of the Rosebud lands, fixed the price of all lands entered or filed upon within the first three months at \$4 per acre, those entered during the second three months at \$3, and those entered after the expiration of six months at \$2.50.

Held, That where a tract was entered during the first three months the price was thereby fixed for all time at \$4 per acre, and in event of cancellation of the entry it could not thereafter be again entered except upon payment of such price, regardless of whether the second entry was made during or after the expiration of the first three-month period. 38 213

444. Lands in the former Rosebud Indian Reservation opened by proclamation of August 24, 1908, under the act of March 2, 1907, to disposal under the general provisions of the homestead and townsite laws, are not subject to appropriation by location of soldiers' additional rights. 40 54

445. Proclamation and regulations of May 24, 1906, opening Crow lands. 34 632, 637, 639

446. The last proviso in section 34, act of March 3, 1891, respecting the disposi-

tion of Crow lands contemplates the confirmation of settlement claims otherwise invalid, but is not intended to excuse such settlers from the payment required of others. 20-399

447. Circular of January 17, 1907, under act of January 8, 1907, extending time within which residence may be established upon Crow lands. 35-382

448. The price of all lands formerly in the Crow Reservation, to which title was secured by the Government under the agreement of December 8, 1890, is fixed at \$1.50 per acre. 20-399

449. Section 23, act of March 2, 1889, gives all persons who in good faith made settlement between the dates specified on the Crow Reservation a preference right to reenter upon their claims and secure title under the homestead and preemption laws. 13-657

Sisseton.

450. Circular of March 22, 1892, under act of March 3, 1891, opening Sisseton and Wahpeton lands. 14-302

451. The act of March 3, 1891, contains no penalty for entering the reservation prior to the time fixed in the proclamation, and, although said proclamation forbids such entrance, the right of entry is not forfeited by failure to observe said injunction. 17-153; 20-53

452. Proclamation opening Sisseton, Wahpeton, and Cut-Head lands, Devils Lake Reservation. 33-1

453. Regulations of June 3, 1904, concerning opening of Sisseton, Wahpeton, and Cut-Head lands. 33-8, 9

454. Circular of September 21, 1904, relative to disposition of Devils Lake lands after expiration of "60-day period." 33-263

455. Instructions of February 9, 1905, under act of February 7, 1905, relating to extension of time within which to establish residence upon Devils Lake lands. 33-408

456. Proclamation of June 8, 1907, relative to disposal of lands in Devils Lake Reservation. 35-646

457. Circular of June 28, 1907, with respect to disposal of lands in Devils Lake Reservation. 35-647

458. Lands in the Devils Lake Reservation, opened to entry under the act of April 27, 1904, at \$4.50 per acre, which at the date of the proclamation of June 8, 1907, reducing the price of the remainder of said lands then unreserved and undisposed of to \$2.50 per acre, were embraced in an Indian allotment of record, or were in a state of reservation by virtue of the act of April 23, 1904, reserving lands for a period of 60 days after cancellation of an allotment covering the same, did not fall within the purview of the proclamation; and a subsequent entryman of the land was properly required to pay at the original rate of \$4.50 per acre, and is not entitled to repayment of the difference between the two rates as excess. 39-434

459. In the commutation of homestead entries in the former Sisseton and Yankton Reservations the entrymen are not required to pay \$1.25 per acre in addition to the price fixed by the acts of March 3, 1891, and August 15, 1894. 26-222

Spokane.

See 264 HEREOF.

460. The fourth article of the agreement made with the Spokane Indians March 15, 1887, does not relieve said Indians from any requirement of the act of July 4, 1884, in the matter of final proof, except as to residence on the land. 20-508

461. Surplus lands in the Spokane Reservation classified as timberlands under section 2, act of May 29, 1908, are not subject to location and entry under the mining laws. 39-172

Standing Rock.

See CHEYENNE RIVER AND STANDING ROCK.

Southern Ute.

See UTE.

Turtle Mountain.

See CHIPPEWA.

Utah.

See UTE.

Umatilla.

462. Circular of July 29, 1902, relative to sale of Umatilla lands (Oregon), under act of July 1, 1902. 31-392

463. Instructions of April 19, 1905, under act of March 3, 1905. 33-515

464. The right to make an additional entry under the first proviso of section 2, act of March 3, 1885, is not limited to cases where the original entry was made prior to the act, but extends to fractional entries existing at the time of the sale provided for in said act, if the entryman is otherwise qualified. 15-340

465. The right to purchase under section 2, act of March 3, 1885, is limited to 200 acres; hence, if a person makes an additional entry, under the proviso to said section, the amount he may afterwards purchase, under the body of said section, is diminished to the extent of the acreage embraced in the additional entry. 19-577

466. The acts of March 3, 1885, and July 1, 1902, must be construed *in pari materia*; and so construed the amount of land which may be purchased, by one person, under either or both of said acts, is limited to "one hundred and sixty acres of untimbered lands and an additional tract of forty acres of timbered lands." 33-119

467. The proviso to the act of July 1, 1902, merely gives to settlers on the lands by said act opened to sale a preference right of purchase for 90 days, and does not bestow an additional right of purchase upon such settlers where they have already exhausted their right of purchase under the act of March 3, 1885, which limits the quantity of lands that may be acquired by one person to not exceeding 200 acres. 33-353

468. The acts of March 3, 1885, and July 1, 1902, must be construed *in pari materia*, and where a person failed to secure all the land to which he was entitled at public sale under the first act he may be permitted to complete his purchase at private sale under the second. 33-472

469. The act of July 1, 1902, supplementary to the act of March 3, 1885, accords to *bona fide* settlers a preference right to purchase the lands settled upon

for 90 days, and where during that period purchase is made by one claiming the preference right, but who in fact is not entitled thereto, the entry allowed thereon will not be canceled for invalidity on that ground alone, where there was no existing preference right in another to the lands at the time such entry was made. 34-626

470. No time is specified in the act of March 3, 1885, within which a purchaser must make proof of residence and cultivation, but it rests with the claimant when it shall be submitted, so long as it be within a reasonable time, and when submitted the claimant, in the face of a contest charging failure to comply with the law in the matter of residence, must stand or fall upon the showing made, and will not be permitted, if the proof be insufficient or fraudulent, to cure the default. 34-627

Uncompahgre.

See UTE.

Ute.

471. Ute lands not subject to private cash entry until after public offering. 7-191

472. Ute lands under the act of June 15, 1880, subject only to disposal for cash. 7-191

473. The repeal of the preemption law does not affect the disposition of, under the act of June 15, 1880, which requires said lands to be disposed of by "cash entry only, in accordance with existing law." 18-534; 28-382

474. Lands within former Ute Reservation not subject to homestead entry. 3-293

475. Circular of July 25, 1902, relative to lands in former Ute Reservation subject to homestead entry, under act of June 13, 1902. 31-388

476. The establishment of the White River Military Reservation on lands subject to disposition under the act providing for sale of the Ute Reservation did not impair the trust created by said act, but had the effect to suspend the execution thereof. 7-191

477. The status of lands in the former Ute Reservation not changed by establishment of a military cantonment therein.

3-297

478. A soldiers' additional entry made within the 10-mile strip described in the act of July 28, 1882, may be perfected on payment of the cash price.

9-293

479. The purpose of section 3, act of July 28, 1882, was to confirm the entries, settlements, and locations within the 10-mile strip of those who had entered therein believing it to be public land, subject to payment of the price fixed by law for the benefit of the Indians.

9-293

480. Uncompahgre Ute lands; instructions of April 14, 1898, under the act of June 7, 1897.

28-88

481. In making allotments to the Uncompahgre Utes, as directed by the act of June 7, 1897, the special legislation with respect thereto, in the acts of June 15, 1880, August 15, 1894, and June 7, 1897, must govern, instead of the provisions of the general allotment act, giving controlling effect to the later of said special acts where there is any difference in their provisions.

25-97

482. The Uncompahgres are required to pay for their allotments in Utah \$1.25 per acre out of the proceeds arising from the sale of their reservation in Colorado.

25-97

483. Proclamation of June 6, 1906, and regulations of June 25, 1906, governing opening of even-numbered mineral sections in Uncompahgre Reservation.

34-648, 650

484. Southern Ute lands opened to settlement; instructions of April 15, 1899.

28-271

485. Regulations of March 20, 1907, under act of March 1, 1907, relative to selection of desert lands in Southern Ute Reservation under Carey Act.

35-477

486. The provisions of the act of June 22, 1910, are applicable and operative upon coal lands, or those withdrawn or classified as coal, and otherwise unreserved, situated within the former Southern Ute Reservation.

29-462

487. As the act of June 22, 1910, makes no provision for the initiation, after its passage, of any agricultural claims to lands withdrawn as coal, except under the homestead and desert-land laws and the

reclamation and Carey acts, lands formerly within the Ute Reservation and withdrawn subject to that act and the act of June 25, 1910, are not, so long as such reservation remains unrevoked, subject to appropriation by Ute preemption declaratory statement.

39-614

488. Lands in the Southern Ute Indian Reservation opened by proclamation of April 13, 1899, to occupancy and settlement and to entry under the desert, homestead, and townsite laws and the laws governing the disposal of coal, mineral, stone and timber lands, are not subject to appropriation by location of soldiers' additional rights.

40-550

489. Proclamation, regulations, and instructions governing opening and disposition of Uintah lands.

34-1, 6, 7, 8, 176

490. Circular of February 20, 1906, under act of January 27, 1906, relative to extension of time within which to establish residence on Uintah lands.

34-452

491. Instructions of July 9, 1910, governing sale of unentered Uintah lands.

39-79

492. Instructions of March 30, 1911, under section 21, act of March 3, 1911, relating to commutation of homestead entries of Uintah lands.

30-617

493. There is no authority for leasing lands formerly within the Uintah Reservation and withdrawn for reservoir purposes under the act of March 3, 1905, where such lands have not been appropriated for any particular purpose so as to take them out of the category of public lands.

34-549

494. The provision in the act of May 27, 1902, that persons entering, under the homestead laws, any of the unallotted lands in the Uintah Reservation, shall pay therefor at the rate of \$1.25 per acre, is not repealed by the provision in the act of March 3, 1905, "that the said unallotted lands shall be disposed of under the general provisions of the homestead and townsite laws."

33-616

495. By reason of the legislation affecting these unallotted lands, which amounts to an appropriation thereof, no claim on the part of the State to any portion thereof will be recognized, either under its grant of specific sections in place in support of

common schools, or under the act of March 2, 1895. 33-610

496. A married woman not the head of a family is not qualified to make entry of Umatilla lands opened to disposition under the acts of March 3, 1885, and July 1, 1902, and an entry made by one so disqualified is not confirmed by the acts of March 3, 1905, and June 29, 1906. 38-142

497. To meet the requirements of the act June 29, 1906, which provides that purchasers of untimbered Umatilla lands who, prior thereto, had made full and final payments therefor should be entitled to patent upon submitting satisfactory proof that the lands are not susceptible of cultivation or residence, but are exclusively grazing lands, a showing that the lands have actually been used for grazing purposes is not essential, where the fact that they are exclusively grazing in character is otherwise satisfactorily shown. 38-38

498. The right to make an additional entry conferred by section 2, act of March 3, 1885, upon persons whose claims were made fractional by the boundary line of said reservation crossing the same, may be exercised by the widow of a deceased homesteader. 20-428

499. The use of land for grazing purposes is sufficient compliance with the law as to cultivation, if the land is better suited to such use than to raising crops. 20-362

500. Under a purchase of untimbered land, where the payments are made in time, but proof of residence and cultivation is unsatisfactory, the entry is not defeated thereby, but should be suspended until such time as the purchaser may furnish proof. 20-295

501. The laws regulating succession under homestead entries are not applicable to Umatilla cash entries. The rights of a deceased entryman, intestate, in the latter case descend to the heirs, subject to administration according to the laws of the State. 22-315

502. The administrator of the estate of a deceased purchaser of Umatilla lands may submit final proof in support of the purchase made by the decedent. 22-315

503. The limit of the grant to the Raven Mining Co. made by the act of May 27,

1902, was the privilege to locate, under the mining laws, 100 mining claims upon the unallotted lands of the Uintah and White River Tribes of Ute Indians, and neither that act nor any of the subsequent acts extending the time of opening said unallotted lands relieved said company from compliance with the provision of section 2325, R. S., requiring payment to be made for lands embraced in a mining claim as a condition to the issuance of patent therefor under the mining laws. 34-306

504. In the exercise of the right granted the Raven Mining Co. by the act of May 27, 1902, to locate, under the mining laws, 100 mining claims upon the unallotted lands of the Uintah and White River Tribes of Ute Indians, the company is not confined to the lands formerly embraced within its lease. 35-382

505. The rights of the Raven Mining Co. under its lease with the Uintah and White River Tribes of Ute Indians and the acts of May 27, 1902, and March 3, 1905, attached and became definitely fixed by the actual location of any given claim, in the form as filed conformably to the act of 1905, and where the located ground had prior to that time been operated under its lease, rights theretofore existing under such lease were at that date terminated. 36-190

White Earth.

See CHIPPEWA.

White River.

See UTE.

Yakima.

506. Instructions of July 1, 1904, relative to suspension of applications to purchase lands in Yakima Reservation under act of June 3, 1878. 33-83

507. Directions given for preparation of a circular under act of December 21, 1904, relating to sale and disposition of unallotted lands of Yakima Reservation in Washington. 33-579

508. Circulars of June 28, 1905, under act of December 21, 1904, relative to unallotted lands in Yakima Reservation. 33-671, 673

509. The authority conferred upon the Secretary by the act of December 21, 1904, to dispose of certain lands claimed by the Yakima Indians and adjoining their then-recognized reservation on the west, held to embrace such of said lands as fall within the limits of the Mount Ranier Forest Reserve. 34-13

510. Under the act of March 6, 1906, authorizing the disposition of such surplus and allotted lands on the Yakima Indian Reservation as may be subject to irrigation by means of projects under the reclamation act, 20 acres is fixed as the unit for Indian ownership to be irrigated by the waters of any such project, and if an Indian desires to accept the benefits of the act and place his surplus lands under the control of the Government to be sold for his benefit, he can do so only upon the condition that he will retain 20 acres thereof, and no more, for which a water right shall be secured to him, appurtenant to the land and subject to the same charge for construction and annual charge for maintenance as other lands under the project. 35-110

Yankton.

511. Instructions of May 17, 1895, and proclamation, opening Yankton to settlement under section 12, act of August 15, 1894. 20-435

Zuñi.

512. The President, under treaty and constitutional authority, has full power to protect the Zuñi Indians in their occupancy by directing a reservation for such purpose. 13-628

INDIANS.

See ALASKAN LAND, II; CONTEST, 430; HOMESTEAD, V; INDIAN LANDS; RESERVATION, II.

1. Are not entitled to the benefit of the preemption laws. 1-491

2. The general statutes of naturalization do not apply to. 1-491

3. Aboriginal occupants of Alaska are not, as said term is used in section 2103, R. S. 19-323

INSANITY.

See CONTEST, 564; HOMESTEAD, 215-216; PRACTICE, IX, c.

1. Under act of June 8, 1880, the duly appointed guardian of an insane homestead settler can, after five years from date of the entry, make final proof. 2-101

2. The rights of a preemption or homestead claimant, who has become insane, may be shown and his claim perfected by any person duly authorized to act for him during his disability. 24-495

3. If the insane person becomes sane before the expiration of the five years, he must resume residence and cultivation. 2-102

4. It is advisable for a guardian or trustee to file his address in the local office, with proof of his authority to act, in order that he may be notified of any attack on the entry. 2-102

5. To be within the act of June 8, 1880, the claim must have been of record prior to the declaration of insanity. 2-103

6. A settler upon unsurveyed land who in good faith complied with the law as to settlement and became insane is entitled to the benefits of the act of June 8, 1880, as fully as though he had regularly made entry of surveyed lands. 37-576

7. Where a settler has "regularly initiated" a claim with the intention of making entry and becomes insane before expiration of the time during which his residence, cultivation, and improvement are required to be continued to entitle him to perfect his claim, the person legally authorized to act for him may make the required proofs and perfect the claim for the benefit of the settler. 32-522

8. The wife of an insane person who had settled on and improved a tract, but who had not filed a claim for it, may make entry in her own name as head of a family; her husband being regarded as civilly dead. 2-102

9. Failure to produce record proof of marriage will not defeat the right of the widow of a deceased insane settler to complete his claim under the act of June 8, 1880, where it is shown that the settler lived with and held her out to the world as his wife. 37-576

10. Notice may not be served on a contestee who is insane, nor on the superintendent of an asylum where he is confined.

2-230

11. Notice of contest against the entry of an insane person must be served in accordance with the statutory regulations of the State or Territory.

10-238

12. The acts of one who is of unsound mind performed prior to a judicial determination of his legal status are not void, but voidable.

12-690

13. The department may determine whether a party executing a relinquishment is of unsound mind.

12-690

14. The power vested in the Secretary by section 441, R. S., to supervise all proceedings to acquire public lands, includes authority to inquire into the mental capacity of an entryman to make entry.

32-583

15. The test of mental capacity to make homestead entry is whether or not the entryman possesses sufficient mind to have a reasonable perception of the nature, effect, and legal consequences of his act in making the entry.

32-583

16. The acts of a person previously adjudged insane are void *ab initio*.

13-541

17. The mental status of an entryman should be ascertained in accordance with the laws of the State in which he resides.

15-399

18. A protest against preemption final proof setting forth that the preemptor is of unsound mind must be dismissed, if the evidence does not overcome the legal presumption of sanity.

18-208

19. It is not necessary in invoking the act of June 8, 1880, where a homesteader has become insane, to show that he is a citizen of the United States, it being only necessary to show that he had complied with law up to the time of becoming insane.

34-167

20. In completing the claim of an insane settler under the act of June 8, 1880, proof of citizenship, or even that the settler had ever declared his intention to become a citizen, is unnecessary.

37-576

21. The act of June 8, 1880, does not authorize patent if the proof fails to show citizenship of the entryman. (See 34-167.)

29-710

22. An alien who was deported within three years after coming to this country, on the ground of insanity existing prior to his arrival, was not qualified to initiate a homestead claim, notwithstanding he may have declared his intention to become a citizen, and an entry made by him is not confirmed by the act of June 8, 1880.

38-418

23. The act of June 8, 1880, contemplates confirmation only in cases where actual residence has been established and maintained up to the time of becoming insane.

37-212

24. The homestead entry of one who became insane before expiration of six months from entry, without having established residence, is not protected by the act of June 8, 1880.

38-515

25. The act of June 8, 1880, is not applicable where the entryman, prior to becoming insane failed to comply with the law in good faith, or where he is not living at the time application is made to offer proof.

38-574

26. Where a homestead entryman on account of mental incapacity to understand the necessity therefor fails to submit proof within the seven-year period, and the Land Department, in ignorance of the reason for such failure, cancels his entry because of the expiration of its statutory life, and another, not in good faith, but with full knowledge of the entryman's long-continued compliance with law, and of his mental incapacity, thereupon makes entry of the land with intent to acquire title for his own use and benefit, such entry, upon the Land Department becoming fully advised as to the true facts and circumstances of the case, will be canceled and the entry of the insane entryman reinstated with a view to submission to the board of equitable adjudication for confirmation.

35-378

INSTRUCTIONS AND CIRCULARS.

See TABLE OF, PART 2.

INTERVENER.

See PRACTICE, VIII.

IOWA.

See SURVEY, 132; SWAMP LAND, 13, 65, 126.

IRRIGATION.

See FINAL PROOF, 406-435; RECLAMATION:
RIGHT OF WAY, V; WATER RIGHT.

ISLAND.

See PUBLIC LAND, 4; PUBLIC SALE, 12;
SURVEY, 230-251.

1. Instructions of December 7, 1909, with respect to disposal of Cane Island, Ark. 38-330

2. Surveyed on the petition of a settler should be offered at public sale as an isolated tract. 9-529; 17-330

3. Island surveyed on application may, in the commissioner's discretion, be sold as an isolated tract or disposed of under the general land laws. 16-496

4. Accretions to, formed by washing or recession, become part of the lands they adjoin. 1-596

5. Formed in a river after the survey and disposition of the adjoining shore lands does not belong to the United States. 14-433

6. Where land has been surveyed, sold, and patented by the Government the subsequent gradual erosion of the soil, resulting in the formation of an island in a navigable stream occupying the area formerly surveyed and sold, does not operate to vest title in the Government to such formation. 12-681

7. No law authorizing entry of submerged lands lying in a navigable stream. 19-565

8. The jurisdiction of the Land Department over a tract properly surveyed as an island, is not affected by the fact that subsequently said land, in consequence of a change in the channel of the river, ceases to be an island. 27-47

9. Upon admission of a State into the Union it acquires absolute property in and dominion and sovereignty over all soils under the navigable waters within its borders; but islands therein formed prior to admission of the State remain the prop-

erty of the United States, subject to disposal as other public lands. 39-566

10. The United States has authority to survey and dispose of an island lying between the meander line and the thread of a stream, navigable or nonnavigable, omitted from survey at the time the public land surveys were extended over the township, where it clearly appears that at the time of the township survey the island was a well-defined body of public land left unsurveyed. 39-566

ISOLATED TRACT.

See APPLICATION, 285; PUBLIC SALE, 5-12;
SURVEY, 255-256.

1. Circular of April 11, 1895, under act of February 26, 1895. 20-395

2. Circular of July 3, 1905, directing that notices of sales of isolated tracts shall specify the date, place, and hour of sale. 34-14

3. Circular of November 4, 1905, relative to suspension of applications for isolated tracts containing less than 40 acres. 34-215

4. Circular of July 18, 1906, under act of June 27, 1906. 35-44

5. Circular of May 16, 1907, under act of June 27, 1906. 35-581

6. Circular of April 18, 1907, relative to affidavit required of applicant. 35-538

7. Instructions of April 27, 1907, relative to isolated tracts within the area affected by the Kinkaid Act. 35-542

8. Regulations of October 28, 1908, under Kinkaid Act. 37-229

9. Circulars of September 5 and December 27, 1907, under act of June 27, 1906. 36-111, 216

10. Instructions of March 4, 1908, modifying paragraph 2 of circular of December 27, 1907. 36-301

11. Directions given for amendment of paragraphs 2 and 10 of circular of December 27, 1907, and paragraphs 17 and 25 of circular of October 28, 1908. 38-84

12. Circular of October 2, 1909, relative to citizenship of applicants. 38-255, 256

13. One who has declared his intention to become a citizen may, if otherwise qualified, purchase an isolated tract under section 2155. 38-84

14. Circulars of June 6 and 7, 1910, governing sale of isolated tracts. 39-10, 22

15. Circulars of January 19, 1912, respecting isolated tracts. 40-363, 373

16. Circular of April 30, 1912, under section 2455, R. S., as amended by act of March 28, 1912. 40-584

17. The action of the commissioner in ordering into market a tract for disposition under section 2455, R. S., is subject to revision by the department on appeal. 26 676

18. The law does not require that the commissioner *shall* order such lands to be sold, but clothes him with discretion to place them upon the market, and the refusal of the commissioner to make such an order will not be disturbed, where no abuse of his discretion appears. 29-347

19. It is within the discretion of the Commissioner of the General Land Office to determine when a tract of land is isolated and whether or not the same should be offered for sale under section 2455, R. S. 40-74

20. The law does not require the commissioner to sell, but clothes him with discretion the exercise of which will not be controlled unless his refusal to offer any tract for sale would be prejudicial to the interest of the Government or otherwise involve an abuse of the discretion resting in him. 35 294

21. The status of a tract, its public land, is not affected by an application for an order for its sale under section 2455, R. S., prior to favorable action on such application. 25-146

22. A tract subject to disposition under section 2455, is open to settlement until the commissioner takes action under said law; and an entry of such land, prior to action by the commissioner, precludes the subsequent exercise of his authority under said section. 19 48

23. An order directing the public sale of land as, precludes the allowance of a Palatka scrip location thereof. 20-237

24. An order directing the sale of an island as an, after survey thereof, excludes the land from appropriation under the homestead law by the applicant obtaining said order, or any other person. 20 407

25. Isolated tracts do not become segregated upon application for sale until the order authorizing sale has been noted upon the records of the local office. 38 483

26. While an order of the commissioner authorizing the sale of an isolated tract, noted upon the records of the local office, segregates the land from other entry or disposition under the public land laws, it will not prevent withdrawal of the land by competent authority from all forms of entry or disposal; and where the local officers, notwithstanding such withdrawal, proceed to offer and sell the land in pursuance of the original order, such sale is unauthorized and of no effect in face of the withdrawal. 40-195

27. The purchaser at the sale of, is not required to furnish an affidavit according to form 4-102 b. 21-454

28. The acreage that may be purchased by any one person at a public sale of, is not limited in amount by the acts of August 30, 1890, and March 3, 1891. 20 255

29. While a check can not be accepted in payment for an isolated tract, yet, where the highest bidder for a tract is surprised by having the check tendered by him refused for the mere technical reason that it is not cash, he should be allowed a reasonable time to convert the same into money which the receiver is authorized to accept. 40-146

30. If a 40-acre tract remains without a claimant and the contiguous tracts are all patented, such tract may be regarded as "isolated or disconnected," and, in the discretion of the commissioner, sold at public sale. 20-119

31. An 80-acre tract will not be ordered into market as an, where one of the 40-acre subdivisions embraced therein is part of a quarter section the whole of which is vacant public land. 23-590

32. The statutory authority conferred upon the commissioner in the matter of ordering the sale of, is limited to tracts that amount to less than one quarter section as described by the public-land surveys, without regard to the fact that such quarter section may contain less than 160 acres. 20-378

33. If at the public offering of, there are no bids, and it is not then sold, there is

no existing law authorizing subsequent private entry thereof. 20-119

34. The act of February 26, 1895, amending section 2455, requires "at least thirty days' notice" prior to sale, and the publication of such notice for five successive weeks in a weekly newspaper is due compliance with said statutory requirement, and the regulations thereunder, where the sale takes place 30 days after the first publication. 27-617

35. The period of publication should close reasonably near the date of sale, but yet a sufficient time before such date to permit a copy of the published notice, with the affidavit of the publisher showing publication, to reach the local office before the hour of sale, making reasonable allowance for delay. 38-550

36. Local land offices are run according to standard time, and a sale of public land advertised to take place at a local office at 10 o'clock means 10 o'clock standard time, and not sun time. 38-550

37. Sales should be held open one hour after the time advertised therefor. 38-550

38. The requirement that the sale of isolated tracts shall be kept open for one hour after the time mentioned in the public notice is not met by postponing the sale until the hour has almost expired and then concluding the sale as soon as the tracts are disposed of, the regulations contemplating that in all cases the sale shall be kept open for the term of one hour. 40-145

39. Section 2455, as amended by the act of February 26, 1895, contemplates that no tract shall be regarded as isolated unless at the time of the application to have it sold the land surrounding said tract is included within entries, filings, or sales made at least three years prior thereto. 24-296

40. If a tract becomes isolated by remaining unappropriated for three years after the surrounding land has been "entered, filed upon, or sold by the Government," and entry is then made of said tract, it thereupon loses its status as an isolated tract; and if the entry is thereafter canceled, said tract will not again

become isolated until the expiration of three years from the date of cancellation. 29-486

41. The proviso added to section 2455 by the act of February 26, 1895, defining the conditions under which a tract may be treated as isolated, contemplates that the tract involved must have been subject to the application of any qualified person under the homestead law during the period specified in said act. 26-607; 28-214

42. A tract is not "subject to homestead entry" within the meaning of the act of February 26, 1895, defining the period that must elapse prior to treating a tract as isolated, while covered by an unexpired preemption filing, or embraced within a homestead entry. 26-676

43. Where the survey of an island is ordered prior to the amendment of section 2455, and it is directed that after survey the island shall be sold as an, but no action is taken on such direction until after such amendment, the land so surveyed can not be thus disposed of until the lapse of three years after survey, it being in the meantime subject to homestead entry. 27-499

44. The words "entered, filed upon, or sold," in the act of February 26, 1895, amendatory of section 2455, refer to an entry, filing, or sale which has been a subsisting entry, filing, or sale for the period of three years, and are not applicable to a preemption filing that had expired prior to the time when application was made to have the adjacent subdivision sold as an isolated tract. 27-715

45. An entry allowed by mistake, of land not subject thereto, can not be regarded as a disposition of such land, within the meaning of the first proviso to section 2455, as amended by the act of February 26, 1895. 25-159

46. Where a bidder, in perfect good faith, because of some mistake or misunderstanding, bids for one tract when he intended to bid for another, he should be allowed within the time of sale to correct his bid to cover the tract intended, and the other tract should be reoffered. 40-146

47. While the commissioner, in the exercise of the authority conferred upon him

by section 2455, should not offer at public sale any tract that does not appear by the records to be free from all claim or right, yet where a tract has been sold under said section while covered by a claim of record, he has ample authority to clear the record of such claim, if invalid, and ratify and confirm the sale and convey to the purchaser the legal title by patent. 35-452

48. Section 2455, as amended by the act of February 26, 1895, operates to reduce the minimum price of isolated and disconnected tracts in alternate reserved sections within the limits of a railroad grant from \$2.50 to \$1.25 per acre. (See 35-411.) 26-699; 28-214

49. Section 2455, as amended by the act of February 26, 1895, does not operate to reduce the minimum price of isolated or disconnected tracts in alternate reserved sections within the limits of a railroad grant from \$2.50 to \$1.25 per acre. 35-411

50. The act of March 6, 1868, directing that the even-numbered sections of lands theretofore withdrawn for the benefit of certain railroads be restored to settlement and entry under the preemption and homestead laws only, does not in any wise affect the authority of the commissioner, under section 2455, as amended by the act of February 26, 1895, to offer at public sale any isolated or disconnected tract of public land within any such section. 35-411

51. The act of June 27, 1906, authorizing the Commissioner of the General Land Office to order into market and sell at public auction for not less than \$1.25 per acre any isolated or disconnected tract or parcel of public land, not exceeding one quarter section, does not repeal the provision in the act of July 25, 1866, fixing the price of lands within the limits of the grant made by said act to the Oregon & California Railroad Co. at not less than the double minimum price, nor the proviso to section 2357 of the Revised Statutes, and therefore does not authorize the sale of an isolated tract within the primary limits of said grant at less than the double minimum price. 40-348

52. The evidence as to nonmineral character required to be furnished by a purchaser of an isolated tract may be sup-

plied in the form of an affidavit by any credible person having the necessary personal knowledge upon which to base an oath as to the character of the land, and need not necessarily be by affidavit of the purchaser himself based upon personal knowledge gained by actual examination of the land. 40-494

53. The water reserve lands restored to the public domain by the act of June 20, 1890, were, by the express terms of said act, made subject to "homestead entry only," and hence are not open to sale under the statutes providing for the sale of. 29-153

54. Ute Indian land subject to disposal under the restrictions of section 3, act of June 15, 1880, can not be sold under section 2455, as amended by the act of February 26, 1895. 27-45

55. Lands in the Siletz Indian Reservation opened to settlement and entry by the act of August 15, 1894, are not subject to the law relating to the sale of isolated tracts. 30-536

56. Lands within the Cheyenne and Arapahoe Reservation, opened under act of March 3, 1891, are not subject to disposal under section 2455, as amended by act of February 26, 1895. 33-447

57. The act of May 11, 1896, provides an exclusive mode for the disposition of public reservations within vacated townsites and additions thereto, where "patents for the public reservations in such vacated townsite, or additions thereto, have not been issued": First, a preferred right of purchase is accorded the original entryman; second, if such right is not exercised the land then becomes subject to disposition under the laws regulating the disposal of isolated tracts. 30-352

58. The act of August 23, 1894, providing for disposal of lands in abandoned military reservations in a particular manner, in nowise affects the authority of the commissioner to dispose of isolated and disconnected tracts within such reservations under the provisions of section 2455. 37-453

59. The provision in section 18, act of May 2, 1890, that all the land in the public land strip shall be open for settlement under the homestead laws, in nowise affects the authority of the commissioner,

under section 2455, as amended by the acts of February 26, 1895, and June 27, 1906, to offer at public sale any isolated or disconnected tracts of such lands whenever in his judgment it would be proper to do so.

37-107

JUDGMENT.

See ENTRY, 353-354; JURISDICTION: RES JUDICATA.

1. Is final as to the tribunal wherein rendered when all the issues of law and fact necessary to be determined have been disposed of so far as that tribunal had power and authority to dispose of them. 6-563

2. An order of cancellation based on the report of a special agent can not be treated as final if the record does not show notice of such action duly served upon the entryman. 9-278

3. Final decision of the department must be carried into effect if not stayed by motion for review or the direct action of the Secretary. 12-45

4. A final decision holding an entry subject to the right of another is an adjudication of all questions of priority as between the parties and leaves only for determination the subsequent compliance with law on the part of the successful party. 13-218

5. When a final judgment of cancellation is rendered by the commissioner the land is thereby opened to appropriation without waiting for the expiration of the time allowed for appeal from such judgment. 6-563, 700; 7-163; 10-221

6. The cancellation of an entry by order of the General Land Office takes effect as of the date the decision is made. 7-163

7. Of cancellation takes effect as of the date the decision is made, and failure to note of record in the local office will not defeat the effect of the judgment. 12-59, 643; 20-191

8. Judgment of cancellation takes effect as of the date rendered, and the land becomes subject to entry as of such date, without regard to the time when such judgment is noted of record in the local office. 13-598; 17-171

9. So far as the rights of the entryman are concerned a final judgment of can-

cellation is operative and effective from its rendition; but no application will be received nor any rights recognized as initiated by the tender of an application until the cancellation of the entry has been noted on the records of the local office.

32-102

10. An order suspending a previous judgment of cancellation is notice to subsequent applicants that the land embraced therein is not subject to appropriation.

13-524

11. On failure to appeal, after due notice of a decision of the General Land Office holding an entry for cancellation, the judgment becomes final, and the land is thereafter open to entry by the first legal applicant. 24-209; 27-619

12. Judgment of cancellation opens the land to settlement, and a motion for review of such judgment does not operate to reserve the land, though the settlement is subject to the final disposition of said motion. 13-182

13. Judgment of cancellation will not be set aside where no error is alleged against the same in the petition for reinstatement. 13-452

14. Of the department deprives the General Land Office of further jurisdiction except in the matter of enforcing the decision. 10-230

15. Generally the judgment should follow the substance of the notice and charge; but if fraud is shown, though not charged, it justifies cancellation. 3-462

16. Can not become final until the decision is promulgated and due notice given thereof. 7-42

17. Judgment rendered *nunc pro tunc* of the same force and effect as though entered at the proper time. 1-210

18. An *ex parte* case awarding the right to make a second entry on the assumption that no adverse claim exists will not defeat the prior intervening claim of another. 16-267

19. The commissioner may not execute a decision of the Secretary otherwise than as made; when the record, with the decision, is returned, it is in the nature of a remittitur in courts of law. 2-523

20. The informal notation of the words "set aside" opposite the description of

a tract of land in an approved list of school indemnity selections will not be treated as a rejection or cancellation of said selection. 5-352

21. Against one claiming as a grantee will not affect rights of the grantor in the absence of notice or proof of the alleged transfer. 9-71

22. Decision of State officers charged with duty of adjudicating land claims, where no appeal is provided for, is final and binds the parties and their privies. 2-13

23. Of an Assistant Secretary is the judgment of the Secretary. 9-588

24. The decisions of a court may not be attacked in a collateral proceeding. 2-365

25. Extrajudicial opinion, given on *ex parte* statement, will not preclude subsequent action. 9-182, 546

26. A decision of the General Land Office, though erroneous, is an exposition of the law so long as it remains in force, upon which settlers have the right to rely; but one pleading such a decision in his defense must prove that in fact he was guided by it. 2-154

27. In determining the rights of parties set up against the homestead entry of a divorced woman it is competent for the department to inquire into the good faith of the divorce proceedings. 14-570

28. Of the department will not be revoked, or otherwise disturbed, on the sole ground that the party in whose favor it is rendered refuses to avail himself of its terms. 20-134

JURISDICTION.

See PATENT, II; PRACTICE, IX, a, b, c, e; RES JUDICATA; STARE DECISIS; SWAMP LAND, 209.

1. Of local office is acquired by "due notice to the settler." 2-58, 66;

3-209, 251, 310; 4-255, 425, 440;

5-658; 6-266, 300; 7-200, 484

2. Acquired when the information is accepted, notice issued, and service made thereof. 7-41

3. Of the local office in case of a hearing is acquired by notice, and is not dependent upon the affidavit of contest. 24-383

4. Not acquired by the local office in the absence of due and legal notice. 3-343; 7-49, 193

5. Issuance of notice on a second contest, during the period allowed for filing a motion for the review of a departmental decision in a prior case, will not defeat the jurisdiction of the local office, where said notice is not served until after the expiration of said period, and no motion for review is filed. 26-70

6. The Land Department is without, to render a judgment affecting the status of an entry, where the entryman has not been made a party to the proceedings in which such judgment is rendered. 17-348

7. In the exercise of administrative authority the department may assume, though the service of notice in the case is not in accordance with departmental regulations. 19-106

8. In the exercise of its proper supervision over the disposition of the public lands the department may waive questions affecting the regularity of proceedings below, and render such judgment as seems just and proper in the case. 23-313

9. Is not acquired by the appearance of one of the defendants in proceedings against an entry made in the name of minor heirs where legal service is not made upon any of the heirs. 15-1

10. The appearance of the defendant, on motion to reopen a case, after default therein, is not a waiver of his right to subsequently raise the question of; and, on appeal from the denial of said motion, the appearance of counsel, on behalf of the defendant, will be held a special appearance for the purpose of determining the question of jurisdiction, where said question is the only one at issue. 19-316

11. Of the local office is not defeated by failure to note the day of hearing in a notice to take testimony before a commissioner where due notice is given in the first instance and the case is continued to a day certain. 15-47

12. Of the commissioner to render a decision on the whole record where he has ordered a rehearing not affected by the action of the local office on the evidence submitted at such rehearing. 11-129

13. The question of, may be raised at any stage of proceedings, and upon slight suggestion in all tribunals.

1-174, 237; 6-409

14. Objection to, saved by exception.

4-378, 440, 537

15. The question of, is one that may be raised at any stage of the proceedings, and a judgment on the merits of a case should not be rendered where it is found that jurisdiction of the person of the defendant has not been obtained.

17-532

16. Participation of counsel in trial after objection to, is overruled, does not affect the force of the objection.

4-378,

440, 537; 9-131; 12-620;

14-689; 16-120; 22-222

17. May be conferred by consent as to parties, but not as to subject matter.

1-474; 10-274

18. Retained over the question where the decision of the department is suspended.

8-243

19. Of the commissioner, under the direction of the Secretary, extends generally to all matters pertaining to the disposition of the public land.

5-573

20. Of the local office in proceedings directed by the department not abridged by the allowance of initial desert entry.

12-34

21. Of the department extends to the determination, in proceedings of its own, whether a person executing a relinquishment is of sound mind.

12-690

22. The pendency of a departmental order suspending an entry deprives the local office of, to entertain contest proceedings against the entry involved.

10-297; 12-56, 370; 15-234; 16-450

23. The issuance of final certificate on the direction of the commissioner will not preclude his successor from ordering a hearing on the merits of the case.

5-174

24. Will be presumed from the action of the department.

4-362

25. Not defeated by death of appellee after notice of appeal.

7-500

26. Whether the department acted without, will not be considered in a collateral proceeding.

4-357

27. Of the department to test the validity of an entry in a direct proceeding is not defeated by its failure to ascertain

the character of said entry in a collateral proceeding.

20-516

28. Of the local office not restricted in hearings ordered by the General Land Office or the department.

5-1

29. The Secretary, in cases on appeal, has power to correct errors disclosed that prejudice public interests.

6-738

30. Want of, in the General Land Office will not limit the authority of the department.

5-49; 6-371; 8-463

31. Of the commissioner not affected by failure of the receiver to concur in or dissent from the opinion of the register.

6-779; 20-387

32. Is conferred upon the General Land Office to control the action of the surveyor general in issuing certificates of location under the act of June 2, 1858.

8-463

33. The department will not assume, on the relinquishment of a patentee executed under protest in order to protect his rights on appeal.

8-70

34. In the absence of specific provision to the contrary in legislation respecting public lands, the administration thereof is wholly within the jurisdiction of the Land Department.

30-160; 40-278

35. The jurisdiction of the Land Department in all matters involving the disposition of the public domain is plenary and exclusive except where specific legislation has made the adjudication of local tribunals auxiliary to the proceedings before the Land Department connected with the acquisition of title.

40-534

36. Over public land and the title thereto remains in the Land Department until the record of completed patent is made.

1-18, 22; 5-49, 174; 31-87

37. Until patent has issued the Land Department has jurisdiction to determine whether a claimant under the public land laws has complied therewith; and, if entry has been made, to determine whether it was properly allowed, and, if found not to have been so allowed, it is the duty of said department to cancel such entry.

32-383

38. It is within the jurisdiction, and is the duty, of the Land Department to inquire into and determine questions touching the validity of claims under the public-land laws, at any time prior to patent.

33-639

39. The Land Department has full authority and jurisdiction, either on its own motion or at the instance of others, to inquire into the *bona fides* of a claimed settlement upon public land, notwithstanding the land is yet unsurveyed and no entry based upon such settlement claim has been allowed. 40-429

40. After patent has issued the Land Department has no jurisdiction to inquire into and determine the rights of one claiming adversely to the patentee, any proceeding instituted by it after patent being for its own information to determine whether proper ground exists for suit to cancel the patent; and one claiming adversely to the patentee is not entitled to be heard in any such proceeding. 40-623

41. The Land Department may on its own motion, for the protection of apparent equities, and after due notice to all parties, reopen an adjudicated case for further consideration, where the land involved appears vacant on the records. 25-499

42. It is within the power of the Secretary, by virtue of his supervisory authority, to correct what appears to have been erroneous in former action, where the subject matter is yet under the jurisdiction of the department. 21-491; 22-459; 23-216; 28-209

43. Prior to the issuance of patent, the Land Department may reopen a case, to correct an error in the decision thereof, and readjudicate the same, after due notice to the parties. 24-289

44. A change in the person holding the office of Secretary does not prevent or defeat a review or departmental action if the legal title to the land still remains in the Government, and the Secretary making the ruling or decision, if still in office, would be in duty bound to review or reverse his own action. 26-34, 177; 27-1; 28-390; 31-87

45. A controversy involving a claim to public lands is never finally settled until it receives such adjudication as removes the land from the jurisdiction of the Land Department, and one Secretary has no authority to bind his successor to either a rule of administration or interpretation of a statute involving the disposition of the public lands. 33-13

46. Until the legal title to public lands passes from the Government, inquiry as to all equitable rights comes within the cognizance of the Land Department, and the Secretary, as the head of that department, may take such action with reference thereto as to him seems in accordance with law. 33-13

47. The Land Department has jurisdiction to determine the equitable as well as the legal rights of parties claiming interests in public lands, and it is the duty of that department to recognize equities such as are recognized by the courts. 35-161

48. By virtue of its jurisdiction over the public lands, involving their care as well as their disposition, the Land Department may at any time, of its own motion, or at the instance of others, wherever it appears or is charged that claims asserted under any of the public-land laws are merely colorable and are used to cloak unlawful timber cutting, illegal fencing, the wrongful exclusion of *bona fide* settlers or claimants, or otherwise to the subversion of those laws, inquire into and determine those questions and thereupon take such further action as may be appropriate and necessary to enforce its jurisdiction and preserve the rights and interests of the public. 35-565

49. Where one has been defrauded of an entry of public lands, the Land Department has jurisdiction, so long as the title remains in the United States and the sole parties concerned or claiming right to the land are the person defrauded and the person guilty of the fraud, or one taking benefit of the fraud with notice of it, to grant full and specific relief by reinstatement of the entry of the defrauded party. 36-474

50. The supervisory authority of the Secretary may be exercised on behalf of a party whose rights have been denied in a decision that has become final under the rules, but has been overruled in subsequent cases involving the same question. 26-177

51. The supervisory authority of the Secretary may be invoked to prevent a wrong or fraud, but not to relieve parties from the consequences of their own negligence. 20-87

52. The Secretary should not take action, under his supervisory authority, on the application of parties that have had full opportunity to protect their rights under the statutes and regulations.

25 216

53. The failure of a party to appeal from a decision of the General Land Office will not defeat the right and authority of the Secretary, acting in his supervisory capacity, to consider the matters involved in said case.

20 127

54. The Secretary, in the proper exercise of his supervisory authority, may vacate a decision of the General Land Office and direct a reconsideration of the case by said office, even though no appeal may have been taken from its decision.

26 453

55. Over patented land restored on surrender of patent.

5 301; 13 715; 14 186

56. The department will not take action on a question that lies properly within the jurisdiction of the courts.

7-255

57. In the administration of the public land laws the Land Department has no authority to determine on their behalf alleged rights of claimants thereunder except where such claimants seek to obtain the legal title to the lands; and where a claimant seeks to obtain the legal title the inquiry by the Land Department is directed to questions affecting his right to have such title conveyed to him, and not to questions relating to possessory or other rights unrelated to his application for the legal title.

34-276

58. Of United States District Court in private claims under the act of July 1, 1864.

5-320

59. The courts have no, prior to the issue of patent, to make any decree affecting final proof or the certificate issued thereon.

15 445

60. A claim before a tribunal without, is not *sub judice*.

5 415

61. Presumption as to correct exercise of, in courts of limited authority when once shown.

5 283, 320, 573

62. Of district courts in Louisiana in the matter of probate and succession.

5-158

63. If the necessary jurisdictional facts appear on the face of succession proceedings a purchaser at a sale thereunder is

not bound to inquire into the truth of the allegations on which the court assumed jurisdiction, nor are such proceedings subject to collateral attack.

17-56

64. Presumed in courts where it is general.

5-161

65. Being apparent, the judgment is not subject to collateral attack.

5-283

66. In matters of general, courts properly constituted determine their own.

1-226

67. Not granted to United States courts to stay proceedings in State courts.

5-481

68. A term of the district court having been held by United States circuit judge, it will be presumed that the formalities prescribed by the act of March 2, 1855, were duly observed.

1-223

69. Presumption in favor of, when exercised by judicial tribunal.

1-175, 223, 422

70. Where created by special statute for special purpose, may be properly questioned.

1-227

71. Apparent want of authority in an executive officer of the Government to set aside a decree of a Federal court where the United States was a party to the suit.

1-177

72. Under a local statute that suspends civil rights during the term of a sentence of imprisonment, a decision of the General Land Office is not ineffective for the reason that the party adversely affected thereby had been convicted and was imprisoned at the time the judgment of the local office was rendered.

26-30

73. Of the Land Department under the presumption law not restricted by the allowance of final proof.

8-269

74. The action of the local officers in accepting final proof and payment does not preclude the Land Department from canceling the entry, if obtained through fraud, or allowed in violation of law.

6-265;

8-269; 9-316; 19-363, 496; 27-716

75. Where affirmatively shown by the record, conclusive.

1-223

76. Judgment or order without, is no protection to those acting thereunder.

1 223

77. Commissioner has no authority to entertain an appeal from the action of the local office on claims presented under the Vigil and St. Vrain grant, as the statute

in such case directs that said claims shall be established to the satisfaction of said office and does not provide for an appeal therefrom. 11-226

78. The recommendation of the commissioner that an entry should be submitted for equitable action is an administrative act, and a decision of the Secretary that such submission is not proper is a decision on an administrative question that has the effect of arresting proceedings, but leaves the decision subject to review by his successor in office. 21-549

79. When questions once passed upon by the department are again presented to the General Land Office in reliance upon decisions of the Supreme Court subsequently rendered, and apparently opposed to the departmental action, the Land Office should make report to the department with such recommendation as may be deemed advisable. 27-481

80. The respective jurisdictions of the Department of the Interior and the Department of Agriculture over applications for rights and privileges within forest reserves defined. 33-609

KANSAS.

See STATES AND TERRITORIES, 105-108.

KINKAID ACT.

See HOMESTEAD, XVI, a.

LACHES.

See CONTEST, 387, 544-550, 675-686; MINING CLAIM, 162-172; OFFICERS, 6, 25; PATENT, 195.

1. In the absence of a statute of specific limitation, the doctrine of laches does not apply as against the Government. 38-34

LAKE.

See PUBLIC LAND, 7; SCRIE, 96, 113; SURVEY, 109, 115-124, 130-133, 213-225; SWAMP LAND, 65, 96, 125-130.

1. An inland lake 2 miles long is not navigable in the sense that its waters can be put to a public use for the purpose of commerce. 3-201

2. Under the law of Oregon the title of riparian proprietors on the borders of navigable, and rivers extends only to the water's edge. The right beyond the edge is only an easement that can not be conveyed. 14-115

3. If none of the lands contiguous to a former nonnavigable meandered, have been disposed of or applied for, the land previously covered by water may be surveyed for disposition as Government land if it has become dry and fit for use. 14-119

4. Riparian ownership of lands adjacent to a nonnavigable meandered, includes the lands to the middle thereof. 14-156

5. Lands lying within the meander line of a nonnavigable, belong to the adjacent proprietor. 14-274

6. Purchaser of meandered land lying on the border of a, takes title to the shore line. 14-516

LAND DECISIONS.

See DECISION.

1. Directions given for citations from the departmental publications of. 3-419

LAND DEPARTMENT.

See DECISION; JURISDICTION; OFFICERS.

I. Generally.

II. Secretary.

III. Commissioner.

IV. Register and Receiver.

V. Local Office.

VI. Surveyors General.

VII. Special Agent.

I. Generally.

1. Whenever any action is required to be taken by an officer of the land department, all proceedings tending to defeat such action are impliedly inhibited. 2-243, 610

2. In the absence of allegation or showing to the contrary, it is presumed that the officers of, have properly discharged their duty. 2-465

3. Administration of, ought not to be withheld from regular business because of possible hardship in a few cases. 4-144

4. The disqualification to enter public lands contained in section 452, R. S., extends to officers, clerks, and employees in any branch of the public service under the control of the Commissioner of the General Land Office. (See 11-96, 348.) 10-97

5. Employees may not enter public lands. Circular of September 15, 1890. 11-348

6. Circular of May 12, 1906, under section 452, R. S., relative to entries by employees. 34-605

7. A blacksmith hired to work at his trade by the Commissioner of Indian Affairs on an Indian school reservation is not, by such employment, disqualified under section 452 to enter public lands. 25-334

8. A surveyor general, who orders and approves the survey of a mining claim, is disqualified as an applicant therefor under section 452, and the departmental regulations thereunder, while holding such office. 24-393

9. Under section 452, surveyors general and deputy mineral surveyors are disqualified as applicants for mineral land. 29-333

10. A deputy mineral surveyor is with-in section 452, and disqualified from acquiring title to a mining claim in which he was interested at the time of his official report thereon, and at the date of application for patent. 26-122

11. A deputy mineral surveyor who has no interest, real or contingent, in a mining claim at the date of the survey thereof by him, nor at the date of the application for patent, but who subsequently makes entry thereof, does not come within the spirit of section 452, prohibiting employees from "purchasing or becoming interested in the purchase of the public land." 30-139

12. Clerks in the office of the surveyor general are clerks or employees in the General Land Office within the meaning of section 452, and disqualified to enter public land. 11-96

13. One who accepts and holds an appointment in, is not prevented from com-

pleting title under a homestead entry previously made, where the position confers no advantage upon claimant in the matter of prosecuting his claim. 15-266

14. Employment in the local office as an agent of others to secure information from the records does not bring such person within the inhibition of section 452. 16-546

15. A forest ranger is an employee of the General Land Office within the meaning of section 452, and prohibited from "purchasing or becoming interested in the purchase of any of the public land," regardless of whether actually employed or on furlough at the time of presenting his application. 33-435

16. Regulations made in conformity with statutes have all the force and effect of law. 2-709;

5-169; 6-111; 9-86, 189, 284, 353

17. The Land Department has authority to make such rules and regulations, not inconsistent with law, as may be necessary or appropriate to secure the effective and convenient administration of any law which falls within its jurisdiction. 31-288

18. Regulations will not be permitted to defeat a statutory right. 2-283; 5-429

19. Specific statutory authority not necessary for the performance of an act within general power. 13-17; 19-380

20. A promise, expressed or implied, by an officer or employee of the department, that certain results shall follow a certain line of action, can not bind the head of the department or control him in determining the scope of his jurisdiction or the extent of his power. 33-391

II. Secretary.

21. In acts of, the assent of the President is presumed. 5-520

22. The decision of the Acting Secretary is in effect the act of the Secretary. 5-277

23. The decision of an assistant, has the same legal effect as the decision of the Secretary. 9-588

24. The acts of the heads of the several departments in relation to matters which appertain to their respective duties are, in legal effect, the acts of the Executive. 31-88

25. Authority of, in all matters pertaining to the disposition of public land or settlement of private claims.

5-49, 483, 570

26. Will correct errors of local office in proper case made.

5-439

27. Official duty of head of department not merely ministerial.

4-443

28. May not authorize an unlawful act.

4-67

29. The Secretary has no authority to enter into any agreement providing that an entry may be consummated in any manner or at any time other than as provided by law.

34-351

30. Supervisory powers, how invoked.

5-23

31. Is charged with general supervisory authority in all matters pertaining to disposition of public lands.

13-13, 279, 624

32. The fact that the execution of a statute is specially laid upon the Secretary does not authorize him to suspend the rules of procedure provided for the orderly disposition of matters before the department.

13-279

33. A statute that provides for action on the part of the Secretary "after allowing opportunity for all parties in interest to be heard before him," does not require such officer to personally hear the witnesses testify and listen to oral arguments, if all parties have notice, and are permitted to submit evidence and written arguments that are considered by him.

26-280

III. Commissioner.

34. General supervisory authority conferred upon.

1-455

35. Is vested with discretionary authority.

3-55; 9-627; 10-491

36. Authority to formulate regulations.

5-27

37. Action in passing upon decisions of local office is judicial.

5-247

38. General authority in all matters affecting the disposition of public lands.

5-570; 8-463; 13-3, 13, 497, 624

39. In the absence of a specific act of Congress to the contrary, the entire administration of the disposition of public lands is within the jurisdiction of the

commissioner under the supervision of the Secretary.

40-278

40. The order of, is, in contemplation of law, the order of the Secretary, as the acts of the heads of departments, within the scope of their powers, are in law the acts of the President.

2-713

41. Has authority to determine questions arising on special sale of lands.

4-25

42. Right to obtain requisite information before the rendition of judgment.

4-316

43. A decision rendered by the acting commissioner has the same force as the act of the commissioner.

5-504

44. Has full power in an *ex parte* proceeding to review, on his own motion, any former action by him respecting disposal of public lands, and to correct any former error respecting their entry, so long as the title remains in the United States.

37-112

IV. Register and Receiver.

45. The duties of, are distinct, and neither can discharge the duty of the other in the absence of express authority.

1-150, 545

46. A vacancy in the office of either disqualifies the remaining incumbent for the performance of the duties of his own office during such vacancy.

9-365; 14-133

47. A vacancy in the office of receiver does not prevent filing an answer under a rule to show cause why an entry should not be canceled; final action, however, on such matter being held in abeyance until the vacancy is filled.

27-547

48. When a vacancy occurs in the office of register or receiver, official action can not be taken until the vacancy is filled.

12-297; 20-276

49. The commissioner may direct the suspension of all business at a local office that requires the joint action of both officers where the illness of one renders him unable to act.

14-316, 507

50. The receiver acting alone has no authority to dismiss a contest.

23-548

51. Authority to act for each other.

9-368

52. Relative duties of, considered and discussed.

9-45

53. The interest of a local officer in the subject-matter involved in a contest does not preclude nor excuse such officer from taking part in the determination of the case. (See 17-220.) 16-28

54. A local officer, who has a property interest in the subject-matter involved in a contest, is not qualified to try and determine the case. 17-220

55. The register is not disqualified to act in a case by the fact that he was of counsel in another suit involving the same land. 28-151

56. Where the register or receiver is sworn as a witness and testifies as to a disputed fact at the hearing in a contest case, he should not act in his official capacity in the decision of the case. 37-35

57. Where one officer performs a clerical or ministerial act for the other the law will regard the act as performed by the proper officer. 9-45

58. An entry is not invalid because allowed by the receiver, in the absence of the register, where both offices are filled at such time, and the register on his return approves the action of the receiver. 28-8

59. The official acts of the register and receiver are subject to supervision, and may be approved or disapproved by the commissioner. 7-86

60. A clerk *de facto* (with the register's knowledge and sanction) is competent to receive an application (to amend a filing) and to give it legal effect. 2-613

61. Circular of November 21, 1908, with respect to leaves of absence of registers and receivers. 37-262

62. Seven hours' service required of district office employees each day, Sundays and holidays excepted. 3-333

63. Must receive applications (for entry) only at the place designated for the transaction of official business. 2-320

64. Acceptance of an application at a place other than the local office is not legal acceptance. 2-320

65. Not required to transact business outside of office hours, but official acts outside of office hours are not invalid. 6-1; 9-54; 23-546

66. Are not authorized to do public business privately or in chambers. 3-109

67. No authority to waive a rule of practice. 6-236

68. Have no authority to change an entry of record by erasure. 7-220

69. May, with approval of the commissioner, adopt regulations as to the order of business in their offices. 7-504

70. Vested with discretion in matters of final proof. 4-197

71. Judgment of, conclusive when it comes collaterally in question. 4-93

72. The duties of the district officers are not merely perfunctory, but to be exercised within the lines of judicial discretion. 3-85

73. In deciding upon preemption claims, act judicially. 4-93

74. Act judicially in the trial of a contest case. 6-626

75. Should determine the right of parties to contest and decide accordingly. 4-203

76. In the disposition of cases, should give the testimony careful consideration and set forth briefly in their opinion the facts on which their judgment is based. 16-508

77. Report as to official acts should be received as correct and true in the absence of any charge or evidence to the contrary. 15-184

78. Failure of receiver to join in the report of a case tried before the local office, does not affect the jurisdiction of the commissioner or Secretary. 6-779; 20-387

79. The fact that neither of the local officers is present while the witnesses are testifying in a hearing had before them, does not affect the regularity of such proceedings, where there is no vacancy at such time in the office of either register or receiver, and the witnesses are sworn by one of said officers and both of them subsequently examine the testimony and render joint decision thereon. 27-425

80. Decisions of local office of no effect until passed in review by the General Land Office. 3-567; 5-246

81. The action of the local officers does not conclude their superior officers or the Government; but is in all cases reviewable by the commissioner and the Secretary. 31-288

82. Decisions of, entitled to special consideration where the evidence is conflicting. 6-225, 330, 660

83. Decisions of, as to matters of fact entitled to special consideration. 4-135

84. May inspect the land involved in contest after due notice to the parties and during the trial. 6-626; 8-38

85. May personally inspect land involved in a contest and use the knowledge so acquired to better understand and apply the testimony. 16-95

86. Must promptly forward to the new local office decisions received from the General Land Office involving lands transferred to a new district. 2-222

87. Instructions of January 6, 1890 (July 16, 1885), in the matter of official correspondence. 10-2

88. The receiver has no authority to accept money in advance of the time when the local office is ready to act upon and allow the application to enter. 6-713

89. Acceptance of application, fees, and commission prior to cancellation of an entry, with promise to make application of record on cancellation, is unauthorized and gives applicant no rights. 2-49

90. Failure of receiver to account for money accepted without authority is not a default as to any obligation due the Government. 6-713

91. The failure of a receiver to account for purchase money paid on submission of preemption proof does not defeat the preemptor's right to a patent. 14-200

92. The receiver has no authority to receive money as the agent of an applicant for public land, and such action creates no obligation against the Government. 8-77

93. A payment to the receiver in advance of the time when the local office is ready to act upon the application to purchase makes the receiver the agent of the applicant for the purpose of payment, and if the application is rejected the receiver is individually liable for payment. 6-713

94. Judicial proceedings by the Government on the bond of a register for the purpose of requiring him to account for an alleged loss of final proof papers will not be advised, as no injury to the Government results from such loss. 22-133

95. The local officers in assisting an applicant in the preparation of his application to enter are the agents of the applicant, and where error in description is made by them in the application the applicant can not set up such error to defeat the intervening rights of another acquired in ignorance thereof. 35-345

V. Local Office.

96. Term "land office" used for "General Land Office" in the act of May 27, 1880. 1-9, 16

97. Regulations of, in the matters of procedure on the opening of public lands to entry conclusive upon parties taking action thereunder without protest. 14-370

98. Local land offices are run according to standard time, and a sale of public land advertised to take place at a local office at 10 o'clock means 10 o'clock standard time, and not sun time. 38-550

99. Access to records accorded for the purpose of making abstracts for the use of county clerks. 1-523

100. The public is entitled to access to the records when the conduct of the public business will fairly permit. 3-174

101. While the records are open to inspection by the public for information as to all matters in which an individual may have an interest, it is the duty of the officers, in the exercise of a sound discretion, to see that the privilege of examining and taking copies is not abused by using the same merely for the purpose of obtaining information having no reference to any particular interest, with a view to selling the information thus obtained as opportunity may offer. 37-599

102. Instructions of April 16, 1910, respecting inspection of serial number registers. 38-575

103. Circular of February 15, 1909, relative to contest clerks. 37-448

104. Clerk employed under authority of receiver is entitled equitably to his salary for services rendered pending action of the commissioner on the appointment. 6-810

105. Persons accepting employment in local office, for the term of such service waive the right of entry there. 4-77

106. Timber-culture entry made by receiver's clerk, allowed to stand in view of lapse of time and compliance with law. 2-314

107. Right of local officers and their employees to make entry of public land. (See I hereof.) 6-105

108. Rights of parties not lost through temporary closing of. 2-211

109. While closed for the transaction of business, time does not run against parties cited to appear before such office. 14-493

110. During a period in which the local office is closed time does not run against settlers in the matter of asserting their claims. 18-543

111. Order of June 13, 1896, with respect to applications filed during a vacancy in the local office. 22-704

112. While closed, time will not run as against applicants for public land if the commissioner so directs. 11-256

113. Removal of local office from Deadwood to Rapid City, Dak. 7-527

VI. Surveyors General.

114. Duties of surveyors general are performed under the direction of the commissioner. 3-495

115. Circular of November 21, 1908, relative to leaves of absence. 37-262

116. Official communications of a surveyor general should not be over the signature of his chief clerk. 3-263

117. Employee in the office of the surveyor general not allowed to enter lands. (See 11-96, 348.) 10-97

118. Deputy United States surveyor not qualified to make entry of public land. 18-394

119. Instructions of July 7, 1911, respecting appointments of mineral surveyors. 40-215

120. Deputy mineral surveyor not debarred from entering public land. (See 18-394; 37-498.) 6-105

121. A deputy mineral surveyor is disqualified to make entry under the public land laws. 37-498

122. A deputy mineral surveyor, while holding such office, is disqualified as a mineral entryman. 29-76

123. Under section 452, R. S., surveyors general and deputy mineral surveyors are

disqualified as applicants for mineral land. 29-333

124. A mineral surveyor is within section 452, and prohibited from making a mineral location, upon penalty of forfeiture of his official position. 26-122; 36-61

125. It is inconsistent with the duties of a United States mineral surveyor to become the owner of capital stock in a company which is the record owner of an unpatented mining claim and to participate in the subdivision of the claim into town lots and act as agent for the company in negotiating the sale of such lots; and in such case he must either divest himself of all interest in and connection with the company or become liable to revocation of his appointment. 40-217

126. A forest lieu selection under the act of June 4, 1897, by a United States mineral surveyor is in violation of section 452, R. S., which prohibits persons connected with the public-land service from directly or indirectly purchasing or becoming interested in the purchase of public lands. 39-177

127. When the duty of locating certain selections was imposed upon the surveyor general of New Mexico, such duty devolved upon the surveyor general of Arizona when the lands affected passed into the new surveying district created for that Territory. 3-624; 16-403

128. A resident of a State holding a commission as United States deputy mineral surveyor therein can not act thereunder in another State; nor can such surveyor hold commissions simultaneously in two or more States. 18-601

129. It is not essential to the appointment of a deputy mineral surveyor that he should be a resident of the land district for which he is commissioned; nor is there any statutory reason why such officer should not hold at the same time commissions in more than one State or land district. 20-163

130. The action of a surveyor general in suspending a deputy mineral surveyor is subject to the supervisory authority of the commissioner, with the right of appeal to the Secretary. 20-283

131. The appointment of nonresident deputy mineral surveyors is a matter in

which the discretion of the surveyor general may be properly recognized. 21-379

132. The discretion of surveyors general in appointing deputy mineral surveyors will not be interfered with by the department, unless good cause for such action is shown. * 27-582

133. The making of a homestead entry by a United States mineral surveyor is a violation of section 452, R. S., and he thereby subjects himself to the penalty provided by that section. 38-346

134. Irrespective of the provisions of said section, however, the commissioner has authority to revoke the appointment of a mineral surveyor whenever he deems such action necessary or advisable. 38-346

135. The action of a surveyor general in revoking the appointment of a mineral surveyor should not be interfered with by the General Land Office or the department, if taken upon fair and reasonable grounds and after opportunity afforded the mineral surveyor to be heard. 38-289

136. It is not only the right, but the duty of the appointing power to revoke the appointment of an incompetent or negligent mineral surveyor, that future impositions upon mining claimants may be avoided. 37-95

137. A United States mineral surveyor's appointment is for no fixed period, and where made "during the pleasure of the surveyor general for the time being" is not terminated by failure to renew bond at the expiration of four years, as required by the act of March 2, 1895. 39-177

138. In case of an adverse report by a special agent against renewal of the bond of a United States mineral surveyor, he should be notified of the specific charges or causes upon which the adverse report is founded and afforded a reasonable opportunity to make response thereto; and should he deny the charges, a hearing will be had. 40-318

VII. Special Agent.

See PRACTICE, 712, X.

139. Manner of proceeding on reports of.
4-503, 545; 5-149, 372;
21-367; 29-141; 34-439;
36-112, 178, 367; 39-458

140. May administer oaths on investigation of fraudulent claims, but not where he acts as agent of the Government at hearings. 3-113

141. Should not examine and report upon claims at the request of interested parties. 14-38

142. Timber-culture entry made by, under express ruling of the commissioner, allowed to stand where subsequent compliance with law appears, and the entryman has left the Government service. (Vacated, 18-425.) 17-85

143. Timber-culture entry made by, is invalid. 18-425

144. Special agents' reports and official correspondence pertaining thereto are in the nature of confidential and privileged communications, and certified copies thereof can not be demanded as a matter of right by the parties in interest in the matter to which they relate, and will not be furnished except upon authority of the Secretary of the Interior. 38-464

LAND DISTRICT.

See WORDS AND PHRASES CONSTRUED, 58.

1. Determination relative to that portion of the boundary common to the Montrose and Durango land districts, Colorado, described in the Executive order of April 14, 1888, defining the limits of the Durango district, as following the township line common to townships 42 and 43, N., R. 8 W., N. M. M. 35-595

LIEU SELECTION.

See RAILROAD GRANT, VI; RESERVATION, 124-127, IV, b; SCHOOL LAND, II; SWAMP LAND, III.

LIMESTONE.

See HOMESTEAD, 130; MINERAL LAND, 36; MINING CLAIM, 795, 842; TIMBER AND STONE ACT, 124.

LOUISIANA.

See MINERAL LAND, 6; PRIVATE CLAIM, IX; SCHOOL LAND, 83, 278-281; STATES AND TERRITORIES, 109-110; SWAMP LAND, 3-11, 19, 48, 53, 68-70, 80-83, 116, 183-187, 296.

MARBLE.

See MINERAL LAND, 44; MINING CLAIM, 794, 843; RAILROAD GRANT, 879.

MARRIAGE.

1. Proof of, accepted where the parties agree to live together as husband and wife and thereafter live in such relation. 16-137

2. Evidence showing that a man and woman are living together in the relation of husband and wife, and are generally considered in the neighborhood as married, may be accepted as establishing the fact of marriage, where such fact is not denied. 21-360

MARRIED WOMAN.

See HOMESTEAD, 185-206; PREEMPTION, 126-137; RESIDENCE, 70-81; TIMBER AND STONE, 33-41; TIMBER CULTURE, 219-223.

MICHIGAN.

See SCHOOL LAND, 70; SWAMP LAND, 17, 78, 231-234.

MILITARY RESERVATION.

See RESERVATION, III.

MILL SITE.

See MINING CLAIM, XIV.

MINERAL LAND.

See COAL LAND; HOMESTEAD, 124-136; MINING CLAIM; PATENT, 57-73; PREEMPTION, 92-99; RAILROAD GRANT, IX; RAILROAD LANDS, 68, 234-237; SALINE LANDS; SCHOOL LAND, 10-32, 291-300, 311-313, 344-345; STATES AND TERRITORIES, 7-18; TOWNSITE, 69-92.

I. Generally.**II. Alabama.****I. Generally.**

1. Mining circular of December 15, 1897. 25-561

2. Paragraphs 109 and 110 of the General Mining Circular, amended by circular order of July 2, 1894. 19-5

3. Circular of July 9, 1894, with respect to determining character of lands within railroad grants. 19-21

4. Instructions of April 9, 1897, as to railroad and State selections in mineral belts. 24-321

5. Instructions of May 10, 1897, as to nonmineral affidavit in case of railroad and State selections in mineral belts. 24-416

6. Instructions of November 14, 1901, relative to nonmineral affidavits in case of entries in Mississippi, Louisiana, Arkansas, and Florida. 31-135

7. Classification of; instructions under the act of February 26, 1895. 20-350, 522, 561, 571; 21-65, 68, 108; 39-113, 116

8. Instructions with respect to classification of lands in Fresno and King Counties, Cal. 37-17

9. Rule laid down as to what constitutes. 1-560

10. Lands valuable for mineral deposits can be disposed of only under the mining laws. 28-348

11. The duty of determining the character of land, whether mineral or non-mineral, and of seeing that the public lands are only disposed of as authorized by law, rests upon the Land Department, of which the Secretary is the head; a decision, therefore, of the Secretary that a tract of land is principally valuable for its mineral deposits, while undisturbed, is binding upon all the officers of the Land Department, and prevents disposition of the land in any other way than as prescribed by the laws specifically authorizing the sale of mineral lands. 28-348

12. Whatever is recognized as a mineral by the standard authorities, whether of metallic or other substances, when found in the public lands, in quantity and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, must be treated as coming within the purview of the mining laws. 25-233, 349, 351

13. A final mineral return under the act of February 26, 1895, operates to except the lands so classified from the grant to the Northern Pacific, but does not prevent such disposition of said lands as may be proper, on a subsequent showing as to their character; the classification being

treated as of the same effect as a mineral return by the Government surveyor.

25-446

14. The act of February 26, 1895, does not authorize classification of lands in even-numbered sections, and the fact that lands in an even section were classified as mineral under that act is no bar to selection thereof by the railway company, where such lands were returned as non-mineral at the time of survey. 37-68

15. The fact that a tract of land was, prior to survey, classified as mineral under the act of February 26, 1895, can not be considered as a classification of the lands as mineral "at the time of actual Government survey," within the meaning of the act of August 5, 1892. 34-211

16. The act of February 26, 1895, does not contemplate classification of even sections, and the character of said sections is only considered where the mineral or non-mineral character of the odd sections can not be otherwise satisfactorily ascertained. 26-684

17. In classifying unsurveyed lands under the act of February 26, 1895, where the entire area of the tract, as designated by natural or artificial boundaries, is of the same character, the classification should be made without reference to the particular section. 26-423

18. The provision in section 5, act of February 26, 1895, that at hearings held under protests filed against the classification of land "the United States shall be represented and defended by the United States district attorney," requires said attorney to assist in procuring a mineral classification of the land wherever the facts show that to be its true character, and to that end such officer should endeavor to sustain the mineral classification. 28-295

19. In case of a protest filed under the fifth section of the act of February 26, 1895, against the classification of land under said act, the department will apply substantially the same rules, in determining the character of the land, that the classification commissioners are directed by said act to apply. 30-442

20. The rules prescribed by the act of February 26, 1895, differ from those applied by the department in ordinary contests involving the character of land in

that mining locations made in any section of land are declared by said act to be *prima facie* evidence of the mineral character of the 40-acre subdivision embracing the same. 30-442

21. To justify a hearing as to the character of land classified under the act of February 26, 1895, where the protest is not filed until after the prescribed time, and after the approval of the classification by the Secretary, such a showing of fraud in the classification must be made as would condemn and avoid it, if sustained by proof produced at the hearing. 29-102

22. An approved classification under the act of February 26, 1895, will not be inquired into upon a protest filed subsequently to the time allowed in the act for the filing of protests and which contains no competent allegation that there was such irregularity in the classification as to vitiate it. 36-40

23. A protest against the classification justifies a hearing as to the character of the land, where it is shown thereby that the report of the commission, on which the Secretary approved the classification, was false, and a clear misrepresentation of the character of the land. 29-102, 675

24. Lands more valuable on account of limestone deposits than for agricultural purposes are mineral lands within the meaning of the act of February 26, 1895. 30-475

25. Land more valuable for the deposit of sandstone therein than for agricultural purposes should be classified as mineral under the act of February 26, 1895. 29-248

26. Publication of notice of a hearing ordered on a protest against the classification of land under the act of February 26, 1895, must be made in a newspaper published nearest the land; and the register is clothed with discretionary power to designate the newspaper in which the publication shall be made, subject to review by the commissioner and the Secretary, and when found to have been abused by the designation of a newspaper not published nearest the land, a hearing had in pursuance of such notice will be set aside. 32-611

27. Decision of May 10, 1904 (32 L. D., 611), relating to the classification of certain lands in the Coeur d'Alene land district, Idaho, under the act of February 26, 1895, construed, and directions given with respect to further proceedings with a view to determining the character of the lands involved. 33-74, 601

28. Nonmetallic, as well as metallic, minerals within purview of lode mining laws. 35-652

29. Regulations governing entry of lands containing borax and alkaline earths, sulphur, alum, and asphalt. 1-561

30. Borax, soda, alum, oil, etc., are minerals within the meaning of the mining laws. 2-703

31. Fire clay or kaolin subject to mineral entry. 1-565

32. A deposit of "brick clay" will not warrant the classification of land as. 6-761

33. Lands containing deposits of "brick clay" are not mineral lands, though more valuable for such deposits than for agricultural purposes. 31-103

34. A deposit of clay suitable only for use in the manufacture of Portland cement does not render the land containing it subject to disposition under the placer mining laws. 40-621

35. Gypsum and limestone held to be minerals. 1-560

36. To exclude land from appropriation under the homestead law on the ground that it contains a valuable bed of limestone, it must affirmatively appear that the land is more valuable on account of the stone than for agriculture. 23-353; 30-475

37. Lands containing mineral springs not of a saline character are subject to sale under the general laws. 1-562

38. Land chiefly valuable for phosphate deposits is mineral in character. 18-58; 26-600

39. Phosphate deposits held not to exclude lands from a railroad grant that excepted from its terms mineral lands. (See 26-600.) 19-414

40. The act of October 1, 1890, with respect to settlement claims on Florida phosphate lands is retrospective in character, applying exclusively to cases arising prior to April 1, 1890. 19-475

41. Land containing a deposit of gypsum cement, and more valuable on account of such mineral than for agriculture, is not subject to agricultural entry. 27-57

42. Lands valuable for deposits of guano are mineral lands and not subject to selection by the State under section 8, act of July 16, 1894. 27-95

43. Alumina is not such a mineral as will except land from settlement and entry as agricultural land, or warrant the allowance of a mineral entry thereof. 20-500

44. Land chiefly valuable for marble and slate is mineral in character. 25-233; 29-327; 35-652

45. Deposits of slate, which do not carry deposits of any other valuable mineral, when found in quantity and quality sufficient to render the land more valuable on that account than for agricultural purposes, are subject to appropriation under the placer mining laws. 40-7

46. Valuable deposits of onyx in well-defined fissures in rock in place are subject to appropriation under the lode mining laws. 38-504

47. Sand rock, or sedimentary sandstone formation, in the general mass of the mountain, bearing gold, is rock in place bearing mineral and constitutes a vein or lode within the purview of the statute, which can be located and entered only under the law applicable to lode deposits. 38-294

48. Deposits of gravel and sand, suitable for mixing with cement for concrete construction, but having no peculiar property or characteristic giving them special value, and deriving their chief value from proximity to a town, do not render the land in which they are found mineral in character within the meaning of the mining laws, or bar entry under the homestead laws, notwithstanding the land may be more valuable on account of such deposits than for agricultural purposes. 39-310

49. Stone useful only for general building purposes does not render the land subject to entry as mineral land. (See MINING CLAIM, XII and XIII.) 12-1

50. Land chiefly valuable for building stone, containing no lodes or veins of

quartz or other rock in place, may be entered as a placer claim. 3-116

51. Land of no value except for the stone it contains can not be taken under a homestead entry made with speculative intent. 15-276

52. Existence of a stone quarry on land does not vitiate a homestead entry made in good faith. 11-140

53. Land more valuable for the sandstone therein than for agriculture is mineral, subject to disposition under the mining laws, and a homestead entry thereof is unauthorized. 26-373

54. Land containing sandstone of superior quality for building and ornamental purposes and valuable only as a stone quarry is classed as. 16-508

55. Land chiefly valuable for the building stone it contains is not by such fact excluded from entry under the settlement laws. 16-122, 537

56. Land chiefly valuable for the building stone it contains is not excepted from the school grant. 16-263

57. Land chiefly valuable for the gypsum and petroleum contained therein can only be disposed of under the laws governing the sale of mineral land, and hence is not subject to school land indemnity selection. 29-181

58. Oil land held as mineral. 4-60, 284; 16-117; 25-351

59. Land containing petroleum does not fall within the contemplation of the mineral laws. 23-222

60. Proof that neighboring land contains oil not sufficient to defeat agricultural entry of land returned as subject thereto. 4-60

61. Lands chiefly valuable for deposits of asphaltum must be disposed of under the laws relative to the sale of mineral lands. 29-239

62. Coal is not, within the meaning of the act of June 3, 1878. (See COAL LAND.) 2-827

63. Coal lands are mineral within the meaning, generally, of the laws relating to the public lands. 31-29

64. Land not shown to contain deposits, in paying quantities, of any of the mineral substances usually developed by mining operations, but which appears to be valuable and desired by the parties at-

tempting to secure title thereto chiefly because of a cave or cavern the entrance to which is situated thereon, and for the crystalline deposits, and formations of various kinds, such as stalactites, stalagmites, geodes, etc., found therein, which are made the subject of sale by the parties not as minerals but as natural curiosities, is not mineral land within the meaning of the mining laws. 30-357

65. Not excepted from the arid land act of October 2, 1888. 15-418

66. Lands allotted to Indians, or to which a homestead entryman has acquired vested rights, are not subject to mineral exploration and entry. 31-125

67. Lands not known to contain valuable mineral deposits at the time the rights of an Indian allottee or of a homestead or townsite entryman become fixed and vested are not thereafter subject to exploration, location, or entry under the mining laws. 31-154

68. Rights once vested in an allottee, or in an entryman under the homestead or townsite laws, or in a town-lot purchaser, can not be affected by the subsequent exploration or location of the lands for minerals. 31-154

69. Conditions with respect to the character of land, as they exist at the date of entry, or at the time when all the necessary requirements have been complied with by the person seeking title, must determine whether the land is subject to disposition under the law upon which the application for patent is based, and no change in such conditions, subsequently occurring, can in any manner affect the applicant's rights to a patent, if in other respects established. 31-88

70. When an applicant under the non-mineral laws has complied with all the terms and conditions necessary to secure title to a particular tract, he acquires a vested interest therein, if it is then not known to contain mineral deposits and is otherwise of the condition and character subject to disposition under the law under which he seeks title, and thenceforth the mining laws have no application to the land, and no subsequent discovery of mineral in the land, or other change in its condition or character, can in any manner affect his right. 31-312

71. The character of land as a present fact is the question raised on issue joined as to its actual character. 4-478; 7-265

72. Character as, must appear as a present fact to defeat an agricultural entry upon land returned as subject thereto. 6-218; 11-462

73. Proximity of land to coal veins will not alone warrant the conclusion that it is mineral in character. 11-462

74. The fact that a placer claimant has conducted profitable mining operations upon a part of his claim does not, in itself, give him any right as against an adverse homestead claimant for another part of such claim, lying in a different quarter-section, and that had been prior thereto adjudged nonmineral in a departmental decision. 26-216

75. The allowance of an entry on final proof, in which the character of the land is duly shown, determines such matter by a higher quality of evidence than that afforded by a surveyor's return, and thereafter anyone attacking such entry must assume the burden of establishing such illegality in the allowance of the entry as will defeat the issuance of patent thereon. 27-1

76. An agricultural entry of land returned as of the character subject to such entry, and shown to be such by the final proof, is not affected by a subsequent survey in which the land is returned as mineral in character. 27-1

77. The return of the surveyor general as to the character of land constitutes but a small element of consideration when the question as to the true character of the land is at issue. 27-1; 31-212; 39-491

78. The presumption as to the mineral or agricultural character of a tract, created by the return of the surveyor general, does not preclude the assertion of any right, or the proof of the facts in the case as they really exist. 17-274

79. The land being returned as agricultural, the burden is with the mineral claimant to show as a present fact that the land is more valuable for mining than agriculture. 2-714, 721; 3-234; 12-612; 14-59; 17-103

80. A mineral return by the surveyor general does not establish the character of lands as chiefly valuable for mineral, and

can not of itself operate to take lands out of a grant to a State, as mineral lands; this can only be done by proof clearly showing that the lands were, at the time the right of the State would have attached, known to contain valuable deposits of mineral, and to be chiefly valuable on account of such deposits. 32-117

81. On issue joined as to the character of a tract the matter to be determined is whether as a present fact the land is more valuable for mineral than for agriculture. 14-54, 59

82. Mineral claimant for land returned as agricultural must show, as a present fact, that mineral can be obtained therefrom in such quantities as to make the land more valuable for mining than agriculture. 7-265; 8-440; 13-517

83. Where a mineral entry has been allowed on land returned as agricultural the burden of proof will lie upon one who thereafter alleges the land to be in fact agricultural. 14-54; 17-545

84. On proof of the mineral character of a tract and allowance of mineral entry therefor the burden of proof is upon one who asserts the nonmineral character of the tract, even though it was returned as agricultural. 15-196

85. If the presumptive mineral character of land is based upon exploration of only one portion thereof, the burden assumed by one who alleges the agricultural character of such land is sustained by evidence of exploration on the same portion, sufficient to demonstrate the fact of its nonmineral character, and thereby overcome the effect of the alleged prior exploration and discovery. 25-167

86. The burden of proof is upon an agricultural claimant for land returned as mineral. 7-265, 532

87. In proceedings under a protest against an agricultural entry, in which the mineral character of the land is alleged, the burden of proof is with the agricultural claimant, if the land is returned as mineral in the surveyor general's report then in force. 23-34

88. The burden of proof is upon an agricultural claimant for land returned as, to show the fact of its nonmineral character, but he is not required to prove affirmatively its agricultural character. 10-311

89. In case of contest, where the land is returned as, the burden is not shifted to the mineral claimant by the nonmineral affidavit and publication of notice by the agricultural claimant. 10-311

90. The character of land as a present fact is the question for determination on issue joined between a mining and agricultural claimant. 10-536

91. A decision that land returned as mineral is in fact agricultural puts the burden of proof upon one alleging a subsequent discovery of mineral. 7-532

92. The burden of proof is properly upon one alleging the mineral character of a tract that has, prior thereto, been adjudged agricultural. 21-277

93. In case of a hearing to determine the mineral or nonmineral character of a tract theretofore held by the department to be principally valuable for its mineral deposit, the burden of proof is with the agricultural claimants, and it is incumbent upon them to clearly overcome the effect of the former decision. 28-348

94. The burden of proof rests with a protestant who attacks an agricultural entry on the ground of the "known" mineral character of the land at date of entry, irrespective of the fact that the land may have been returned as mineral after the allowance of the agricultural entry. 23-34

95. If the burden of proof as to the character of land is improperly placed, and accepted without objection, the party so relieved from said burden is not in a position to complain of such action on appeal, in the absence of an attempt in the appellate tribunal to shift the burden, and apply the changed standard to the record made on the hearing in the local office. 24-507

96. In a controversy as to the character of Alaskan land between a townsite applicant and a mineral claimant, where the mining claim is of record at the date of the townsite application, a settlement prior to the act of March 3, 1891, confers no right that relieves the townsite applicant from the burden of proof. (See 31-88.) 23-417

97. The presumption as to the character of land returned as mineral is not forcible where, after long-continued mining opera-

tions, the land has been abandoned by the mineral claimant as no longer profitable. 7-265

98. The absence of active mining operations will not be held to negative an allegation as to the mineral character of the land, where such land is at the time involved in litigation. 23-35

99. Proof of mining upon a tract that has been adjudicated as, and the subsequent abandonment of such operations, leaves with the mineral claimant the burden of proof to show the present mineral character of the land. 16-52

100. Pending protest proceedings, in which a general charge is made that certain lands claimed under a railroad grant are in fact mineral, will not defeat the right of a mineral claimant, who sets up a specific claim, to be subsequently heard on a similar allegation in event the first proceedings fail. 20-26

101. A hearing had as to the agricultural or mineral character of a number of tracts claimed under a railroad grant, and judgment that a specific tract is in fact agricultural, will not preclude a subsequent inquiry as to the character of said tract, on the protest of a mineral claimant, prior to issuance of patent, if the showing made is clear and convincing. 21-464

102. The publication and posting of notice of a hearing ordered on the application of a mineral claimant, to determine the character of a tract returned as agricultural, and listed as part of an odd-numbered section within the primary limits of a railroad grant, is not sufficient notice to the company of said hearing. 29-27

103. On a hearing to show the alleged agricultural character of a tract held as a mining claim, and that has once been adjudged mineral, the agricultural claimant should be required to prove the abandonment or forfeiture of the mining claim. 20-564; 24-258

104. A final decision in which a tract is held to be, is only conclusive up to the period covered by the inquiry, and will not preclude a subsequent investigation as to the character of said tract on allegation that the mining claims thereon have been abandoned, and that the land as a present fact is agricultural. 20-334

105. A final decision holding a tract to be nonmineral is conclusive up to the period covered by the hearing, but will not preclude further consideration based on subsequent exploration. 19-12

106. In a hearing ordered to determine the alleged known mineral character of land embraced in an agricultural entry, made at the conclusion of a prior contest involving the character of the land, the evidence must be confined to discoveries after the date of the first hearing, and prior to the allowance of the entry. 24-573

107. The nonmineral character of a tract having been determined, the department is not justified in ordering another hearing on the same issue, in the absence of a showing of development that clearly demonstrates that since such hearing mineral has been discovered in such quantities as to overcome the effect of the previous judgment. 24-553

108. A determination that a tract is mineral will not prevent a subsequent hearing, involving the same question, where a change in the character of the land is alleged, but the showing in such a case must be clear and convincing. 25-505

109. A determination that a tract is nonmineral, based principally upon ascertainment of the boundaries of the tract, will not preclude the land department in a subsequent suit, resting on alleged discoveries made after hearing in the former case, from considering anew the question of boundaries. 25-514

110. The existence of gold in nonpaying quantities will not preclude agricultural entry of the land. 17-424

111. The usual nonmineral affidavit filed by an agricultural claimant is not sufficient to overcome a prior decision of the department that the land involved is mineral in character, or to justify a re-examination of such question of fact theretofore fairly tried and deliberately determined. 28-348

112. The character of land claimed as mineral must be shown by actual production from mining or by satisfactory evidence that mineral exists in sufficient quantity to make the land more valuable for mining than for agriculture. 12-612

113. Mineral value of a vein not established by an ordinary assay certificate. 17-103

114. A certificate of location of a mining claim can not be accepted as establishing the mineral character of the tract in the absence of evidence showing actual discovery of mineral. 17-424

115. The location of a mining claim in conformity with law, on land returned as agricultural, raises a presumption that the land is mineral, and the burden of proof is thereafter with anyone alleging the agricultural character of the land. (See 28-174.) 18-190; 20-394; 24-172

116. The presumption arising upon the location of a mining claim that the land, though returned as agricultural, is in fact mineral, exists only in the case of a legal location, where discovery is shown in compliance with law. 21-502

117. A certificate of location of a mining claim is not in itself evidence of the mineral character of the land, and is not sufficient to overcome an agricultural return by the surveyor general. 28-174; 29-181

118. In determining the existence of mineral in paying quantities the physical difficulties to be overcome in working the mine may be properly considered; but questions as to whether claimant can obtain the means to prosecute the contemplated mining operations, or secure the right of way for a water supply, are not for the department to determine. 18-199

119. Land must be held nonmineral where no discoveries of appreciable value have been made and it does not appear that a further expenditure would develop the presence of mineral in paying quantities. 26-190

120. Character of land shown to be mineral by proof of mineral in paying quantities, and actual mining operations are not necessary to such conclusions. 15-196

121. In any case where the character of land embraced in a mineral application is in issue it must appear as a present fact that mineral can be secured in paying quantities. 7-71, 265; 13-86

122. Land must be held mineral in character if mineral has been found thereon and the evidence shows that a person of ordinary prudence would be justified in

further expenditures, with a reasonable prospect of success in developing a valuable mine. 23-34, 417; 24-172

123. On issue joined as to the character of land alleged to be more valuable for coal than for agriculture it rests with the plaintiff to show the existence of a coal deposit sufficiently valuable to be worked as a mine. 15-514

124. To except mineral land from the operation of a townsite or other entry the land must be known at the time of the entry to contain minerals of such character and value as to justify expenditures for the purpose of extracting them. 31-88

125. Whenever mineral and agricultural or townsite claims conflict, the comparative value of the land for mining or agriculture is in question and must be considered. 2-717, 720, 721

126. Where the testimony to agricultural character was speculative and the land never paid the expenses of cultivating it, but the minerals obtained during several years paid for the plant and for mining expenses, it is subject to mineral entry. 2-719

127. The finding of a court of competent jurisdiction, in a suit to recover possession between a mineral claimant and one claiming under a certification to the State, that the land in fact was of known mineral character and appropriated as such at date of selection, though not conclusive upon the United States, may, in the absence of objection, be accepted, if final, as determining the character of the land. 27-327

128. By their designation as "agricultural" in the official plat lands in a mineral belt were set apart as *prima facie* "clearly agricultural" under section 11, act of July 26, 1866 (sec. 2342, R. S.). 2-712, 850

129. Section 2341, R. S., was intended to relieve persons who had settled on lands theretofore designated as mineral when they were afterward found to be agricultural; section 2342 gave the right of settlement on said lands when duly set apart as agricultural. 2-715

130. Agricultural claimants of land mineral in character will not be heard to plead special consideration on the ground that their entries were allowed by order of the General Land Office, and that they have

settled upon and improved the land, where with full knowledge of a prior departmental decision holding the land to be mineral, and of rights asserted thereto under the mining laws, they procured the allowance of their entries without notice to the mineral claimants, and thereafter entered into possession against the protest of said claimants. 28-349

131. Adverse possession and occupancy of a mineral claimant will not defeat an agricultural entry if the land is subsequently shown to be agricultural in character. 16-62

132. A protestant against a mineral entry who desires a hearing as to the character of the land should show *prima facie* that the land was agricultural at date of application for mineral patent. 15-509

133. A hearing will not be ordered on an allegation that a tract embraced in a certified list of State selections, was not, on account of its prior known mineral character, intended to be granted to the State, except upon a strong *prima facie* showing in support of such allegation. 24-486

134. A hearing to ascertain the character of the land will not be ordered upon a protest by a mineral claimant against the patenting of a homestead claim upon which final certificate has issued, in the absence of an allegation or showing by protestant that the land, or a part thereof, was known to be valuable for deposits of mineral at date of issuance of final certificate. 30-216

135. Hearing to determine character of land not ordered in the absence of application to appropriate the same. 8-30

136. All evidence as to character of land should receive due consideration. 3-234

137. At a hearing to determine the character of the land embraced in a mining claim, evidence that it bears timber is admissible as bearing upon claimant's good faith and the weight and credibility to be attached to his testimony. 38-294

138. In determining the character of land the department may adopt such competent method as may seem best. 13-89

139. Testimony of mineral expert, who examines the land under direction of the

Secretary, may be considered with other evidence, where no objection is made to such direction until after its execution.

25-167

140. The Government interested in determining character of land.

3-234

141. The fact that as between a mineral claimant and one claiming under the settlement laws the settler is estopped by his own acts from denying the mineral character of the land, does not relieve the department from the duty of determining the actual character of the land in dispute.

26-100

142. The fact that no one is claiming under the coal-land law a tract shown to be principally valuable for coal, will not justify the allowance of a homestead entry therefor.

25-514

143. Failure to appeal from finding of local officers as to character of land renders their decision final.

8-30; 15-37

144. Determination after hearing as to character of land alleged to be mineral is final.

5-132

145. Mineral character of a tract not established by a decision rendered in a case where such question was not in issue.

7-54

146. Discovery of mineral after sale or disposal as agricultural land will not affect the title.

3-169; 5-193; 6-393; 7-570;

9-83, 411; 12-513; 13-108;

15-37, 514; 21-92; 26-9.

147. May be included within military reservation, and while thus reserved is not subject to other appropriation.

1-552

148. Mineral or nonmineral character of land covered by a scrip location may be determined by the Government without the aid of the locator where he fails to furnish the requisite nonmineral proof.

15-256

149. Prior to approval of a railroad indemnity selection, the land, if mineral in character, is open to exploration and purchase under the mining laws.

24-172

150. Locations prior to survey not in conflict with reserved school sections.

4-96

151. Order of March 24, 1885, suspending action on mineral applications for school lands, revoked.

40-531

152. Prior to approval of a school indemnity selection the land, if mineral in

character, is open to exploration and purchase under the mining laws.

29-181

153. A grant of lands to a State for school purposes does not carry lands known to be chiefly valuable for mineral at the time the State's right would attach, if at all.

32-117

154. A mineral location, made prior to the admission of Utah into the Union, was not of itself sufficient to establish the mineral character of the land so as to defeat the grant to the State for school purposes made by section 6, act of July 16, 1894; but where the State was specially notified of the pendency of an application for patent under such location, and made no objection by way of protest or otherwise to the allowance of the mineral entry, it is bound by the record made upon such application, and a hearing for the purpose of determining the character of the land is unnecessary.

33-37

155. Where the mineral character of a mining claim in conflict with a section claimed by the State under its school grant is challenged by the State, the usual formal proofs under mineral patent proceedings will not suffice, but the mineral character of the claim must be established by substantive proof; and the State is not bound to take the initiative at a hearing ordered to determine that question.

34-723

156. Coal and mineral lands are not subject to selection by the State of Utah under section 7, act of July 16, 1894; but lands containing building stone may be taken thereunder.

29-69

157. The failure of mineral claimants to comply with a departmental order, and show by survey the extent of an alleged conflict with an agricultural entry, warrants the conclusion, in the disposition of said entry, that no such conflict exists.

19-287

158. Segregation survey may be ordered if necessary to set apart the mineral from the agricultural land in a 40-acre tract.

8-443

159. Segregation survey of land covered by homestead entry will not affect the status of said entry so far as the continuity of the tracts is concerned.

9-143

160. A segregation survey at the expense of the agricultural claimant may be

directed where his claim includes lands of mineral character covered by a previous mineral location. 11-409

161. May be segregated from land returned as agricultural at the expense of the mineral claimant. 8-440

162. Fee is indivisible; one can not take title to the surface and another to the mineral underneath. 5-256; 7-283, 321

163. Settlers upon, without protection. 5-131

164. In Missouri, disposed of as agricultural. 1-599

165. Under section 2345, R. S., mineral lands in Minnesota may be taken under the preemption law. 25-157

166. In Alaska, regulations concerning. 4-128

167. The department retains jurisdiction to consider and determine the character of land claimed under the mineral laws until the issuance of patent. 4-314; 11-246, 441

II. Alabama.

168. Coal and iron lands in Alabama. Circular of April 9, 1883. 1-655

169. Instructions of August 17, 1907, relative to reclassification of coal and iron lands under act of March 27, 1906. 36-109

170. In Alabama, disposed of as agricultural. 1-97

171. The act of March 3, 1883, only operated on lands withdrawn and designated as mineral. 3-173

172. The act of March 3, 1883, conferred no rights save as to entries prior to its passage. (See 8-448.) 3-176

173. Lands covered by entries and valid applications prior to the act of March 3, 1883, were not affected by said act. 3-169, 172; 4-476; 9-635

174. The act of March 3, 1883, was not intended to change previous constructions of the law. 3-177

175. Homestead entry initiated by settlement prior to the act of 1883, though not then of record, may be patented under said act. 8-448

176. The protection given by the act of March 3, 1883, to a *bona fide* entry pre-

viously made does not extend beyond the relinquishment of such entry. 7-560; 9-178

177. Effect of the act of March 3, 1883, on a homestead entry for lands of known mineral character. 8-532

178. The general instructions of April 22, 1880, revoking mineral withdrawals and placing the burden of proof upon mineral claimants, are applicable to Alabama lands. 3-169

179. Land reported as valuable for coal prior to the act of March 3, 1883, is not subject to homestead entry until after public offering. 2-35; 7-461, 512; 9-203, 635, 643

180. Land returned as valuable for coal and offered prior to the act of March 3, 1883, is not subject to entry if not offered since the act. 8-74

181. The act of March 3, 1883, requiring prior to entry public offering of lands theretofore reported as containing coal or iron, under departmental construction is held applicable only to lands reported as "valuable" for coal or iron. 12-550; 14-292

182. Land returned as valuable for coal prior to act of March 3, 1883, not subject to purchase under act of June 15, 1880, until after public offering. 8-532

183. Entry of land reported valuable for coal prior to act of 1883, without the prerequisite offering, may be suspended until after offering and then reinstated if not sold. 9-635

184. Report of a special agent, made prior to act of March 3, 1883, that land is valuable for coal, excludes the land from subsequent homestead entry until after public offering. 11-547

185. An entry of land reported prior to act of March 3, 1883, as valuable for coal, and not offered, may be suspended pending offering, and confirmed thereafter if not sold, or, if the entryman so elect, the entry may be canceled, with the right to repayment and without prejudice to his homestead right elsewhere. 9-203

186. Settlement on land prior to date it is reported valuable for coal, and subsequent entry thereof prior to act of 1883, both made when the settler was disqualified, will not except such land from the reservation provided in said act. 12-635

187. The right of a successful contestant can not be exercised upon lands reported valuable for coal prior to act of March 3, 1883, and not thereafter offered at public sale, but his application may be suspended pending such offering and considered as of the date presented if the land is not sold.

10-140

188. An *ex parte* showing not sufficient to overcome the return showing the land "valuable for coal."

9-635

189. Under act of March 3, 1883, all lands theretofore reported valuable for coal or iron must be "offered" before agricultural entry thereof, without regard to whether the land is properly or improperly so reported.

15-563; 23-251

190. Land not known as, covered by settlement and filing made before the act of March 3, 1883, need not be "offered" before the allowance of preemption entry.

8-297

191. A tract reported in 1879 as containing coal, but whereon homestead entry was allowed in 1883, which was afterwards relinquished and canceled, must be offered at public sale.

2-36

192. Land reported valuable for coal prior to act of 1883, but covered by a homestead entry at date of the act, becomes subject thereto on the cancellation of the entry.

11-547

193. One who settled on mineral land in 1871 has no right to it by virtue of section 3, act of May 14, 1880, and is not protected by act of March 3, 1883.

2-35

194. Additional homestead entry of land reported valuable for coal prior to act of March 3, 1883, can not be allowed until after public offering.

11-557

195. There must be compliance with the homestead law to bring land within the exception provided by the act of March 3, 1883.

14-268

MINERAL SPRINGS.

See MINERAL LAND, 37; SALINE LAND.

MINING CLAIM.

See ALIENATION, V; MINERAL LAND; PATENT; TOWNSITE, 69-92.

I. Generally.

II. By whom.

III. Location.

IV. Relocation.

V. Application.

VI. Survey.

VII. Notice.

VIII. Adverse Claim.

IX. Protest; Protestant.

X. Discovery and Expenditure.

XI. Entry.

XII. Lode.

XIII. Placer.

XIV. Mill Site.

I. Generally.

1. Mining circular of December 15, 1897.

25-561

2. Revised circular, approved June 24, 1899.

28-577

3. Revised circular July 26, 1901.

31-453; 32-367; 35-664

4. General regulations of March 29, 1909.

37-728, 757

5. Mining laws recognize prior local laws, rules, and regulations.

1-588

6. Amended regulations of November 7, 1895, modifying paragraphs 32, 50, and 51 of regulations of December 10, 1891.

21-411

7. Paragraphs 22, 23, and 24 of regulations amended.

34-260

8. Paragraph 42 of regulations amended.

36-225; 40-347

9. Mining regulations for Alaska.

4-128

10. Circular of February 25, 1897, under act of February 11, 1897, authorizing placer entry of oil lands.

24-183

11. Paragraph 29, of mining regulations, amended.

24-191

12. Paragraph 44 of regulations amended.

40-222

13. Paragraph 53 of mining regulations, amended.

26-378

14. Circular of July 11, 1900, under act of June 6, 1900, relating to mining claims in Alaska.

30-142

15. The phrase, "as in the case of mining claims," in section 32 of instructions of June 8, 1898, was not intended to change the existing practice controlling the survey of mining claims.

30-40

16. Under the mining laws existing in the United States and Canada, section 13, act of May 14, 1898, according certain

privileges in Alaska to citizens of Canada, is inoperative. 28-178

17. Mining laws recognize jurisdiction assumed by the courts. 1-584

18. Failure to comply with local regulations matter for protest or adverse suit. 5-131

19. Includes a tunnel location. 1-584

20. Law and regulations contemplate that primary decision shall be made by the local office. 4-376

21. The case coming up on appeal from the local office without a decision on the merits, the papers are returned for its action. 4-376

22. Proceedings to obtain patent for mineral land, and to determine whether applicant is qualified to enter and has complied with the requirements necessary to entitle him to patent, are within the jurisdiction of the Land Department; and only those controversies which relate solely to the right of possession as between adverse claimants under conflicting locations are committed exclusively to the courts. 33-142

23. A judgment favorable to applicant in judicial proceedings instituted by an adverse claimant is no bar to a subsequent investigation by the Government to determine whether applicant has in fact complied with the law. 4-314; 7-415; 10-184

24. Decree of court in adverse proceeding determines right of possession as between the parties, but does not deprive the Land Department of jurisdiction to ascertain the true character of the land and whether there has been due compliance with law. 4-314; 14-641; 15-310; 23-95

25. A deed in escrow to land embraced in a mineral application, not delivered until after entry, does not defeat the right of applicant to make entry of such land. 29-89

26. An entry or selection not so far perfected as to confer an equitable title or vested right, does not take the land out of the operation of the mining laws. 31-352

27. When special agent reports noncompliance with the law, whilst the proofs show compliance, hearing should be ordered and special agent directed to produce his evidence. 2-788

28. The result of proceedings in which the parties have had full opportunity to present evidence according to the recognized rules of procedure, should not be disturbed by the report of a special agent on the entry involved. 26-123

29. A decision canceling an entry "without prejudice to the claimant's proceeding *de novo* in a regular manner" is in effect only a permit to the claimant to renew his application, subject to adverse rights. 11-120

30. May be located on land shown by an irregular survey to be school land. 7-459

31. To constitute a valid oath under the mining laws there must be, in some form, in the presence of an officer authorized to administer the oath, an unequivocal act by which the affiant consciously takes upon himself the obligation of an oath. There must be some present act to distinguish the oath from the bare assertion of affiant, and the act must be clothed in such form as will characterize and evidence it. 33-553

32. A notary whose jurisdiction extends throughout a county lying partly within and partly without a land district, is an "officer authorized to administer oaths within the land district," within the meaning of section 2335, R. S. (See 34-314.) 33-238

33. All affidavits under the mining laws are required to be verified in accordance with section 2335, except where authority for their execution is otherwise specifically given by statute. 34-314

34. Where a town settlement is made upon a mineral claim the patent should contain the clause of reservation even if the settlement is unprotected by entry. (See 5-256.) 3-84

35. Patent for, should not contain a clause reserving the right of a townsite. S 602

36. The value of lands for town lots will not preclude its disposition under the mining laws if, in fact, of the character subject to entry under said laws. 18-199

37. In controversies between parties claiming public lands under the townsite and mining laws, respectively, the phrases, "lands known to be valuable for minerals," or "for mineral deposits," and

"known mines," or "land containing known mines," are equivalent in meaning.

29-426

38. A patent issued under the general townsite laws, for lands in an unincorporated townsite, in inoperative to convey title to any lands known to be valuable for minerals at the date of the townsite entry, or to any valid mining claim or possession held under the mining laws at the date of such entry.

32-211

39. The owners of unpatented mining claims located upon the mineral lands of the United States are entitled to the exclusive and peaceable possession of their claims so long as they continue to comply with the requirements of the law respecting possessory rights, and are not required to apply for patent at any time, or ever, in order to preserve such possessory rights.

34-276

40. Assignments of interests in mining possessions are valid even by parole transfer.

1-595

41. Compliance with law on the part of a mineral claimant holding under color of title, will accrue to his benefit on acquisition of the legal title.

23-267

42. Patent issued to applicant after quitclaim, privity of parties being shown.

3-340

43. A mineral claimant of land embraced in a patented placer or townsite, to obviate judicial proceedings, may secure a reconveyance of such land to the United States, and so vest the department with jurisdiction to pass upon the validity of his claim.

13-715; 14-186

44. The ruling in the Juniata Lode case (13 L. D., 715) is not applicable as between two lode claims where the applicant for relief, with due notice, permits the patent to issue without protest.

22-362

45. Lands containing gilsonite, asphaltum, elaterite, and like substances, in the Uncompahgre Ute Reservation, have been, since the date of the Executive order creating said reservation, and still are, excepted from the operation of the mining laws.

29-456

46. Tide lands in Alaska are not public lands within the meaning of the mining laws; and no rights to such lands can be

acquired by exploration, occupation, location, or otherwise, under said laws.

29-395

47. Section 8, act of June 10, 1896, authorizing mineral entries of lands formerly in Fort Belknap Indian Reservation, contemplates that such entries shall be made in accordance with the procedure set out in sections 2325 and 2326. R. S.

29-158

48. The act of May 10, 1872, prescribes the only method by which patent can be secured for a mining claim located prior to its passage, and for which application for patent was not pending at said date, and also the only method by which the owner of such claim can prevent an adverse but junior claimant from obtaining patent therefor.

29-426

49. In case of variance between the *locus* of a patented mining claim as indicated by the tie line described in the patent, from a corner of the claim to a corner of the public survey or a United States mineral monument, and as defined upon the ground, the Land Department will regard as constituting the patented claim, and will not receive further application for patent to, the tract embraced in the survey and bounded by the lines actually marked, defined, and established on the ground by monuments substantially within the requirements under the law and official regulations and corresponding to the description thereof in the patent.

33-91

50. The position of conflicting mining claims, and their positions with relation to each other, must be determined as the claims are defined and established on the ground, and all errors of description of the position of any of the claims, and of conflicts among them, must give way thereto.

39-546

51. Proceedings for patent to a mining claim embracing land lying partly within one land district and partly within another, conducted wholly within one district, and the allowance of entry thereon covering the entire claim, are in no wise effective as to the lands lying without such district, and do not constitute substantial compliance with law as to such lands, within the meaning of sections

2450 to 2457, R. S., such as would warrant confirmation of the entry in its entirety under said sections. 34-40

52. Section 2332, R. S., is not intended to be an independent provision for the patenting of a, but should be construed with other sections of the Revised Statutes upon the same subject, and when so construed held to mean that evidence of the possession and working of a, for a period equal to the time prescribed by the local statute of limitations shall be considered as establishing the location of the claim and the applicant's right thereunder, "in the absence of any adverse claim," but that whatever else said section was intended to dispense with, it does not dispense with the requirements of section 2325, whereby the existence of an adverse claim is made known to the Land Department, and protection accorded to adverse claimants. 29-401, 426, 470

53. An applicant for patent to a mining claim who, invoking the provisions of section 2332, proves that he, or his grantors, has held and worked the claim for the period of time prescribed by the local statutes of limitation for mining claims, is not required to produce record evidence of his location, or to give any reason for not producing it. 34-462

54. Section 2332 simply declares what proof shall be sufficient to show possessory title in an applicant for patent, in the absence of any adverse claim, and does not dispense with the requirement of section 2325 of an expenditure of \$500 in labor or improvements upon the claim, as a prerequisite to the issuance of a patent. 34-462

55. The main purpose of section 2332 is to declare that evidence of the holding and working of a mining claim for a period equal to the time prescribed by the local statute of limitations for mining claims shall be considered as sufficiently establishing the location of the claim and the applicant's right thereunder "in the absence of any adverse claim," and there is no authority for restricting the application of said section to such cases only in which the applicant for patent is unable by reason of the lapse of time or the loss of mining records by fire or otherwise to furnish

the proof of possessory title required by the mining laws. 34-182

56. Lands belonging to the United States can not be lawfully located, or title thereto legally acquired, under the mining laws, for purposes or uses foreign to mining or the development of minerals; and should it be shown in case of an application for patent that the claims applied for were not located in good faith for mining purposes, but for the purpose of securing control of a trail upon lands belonging to the United States, susceptible of such control by reason of the surrounding physical conditions, so as to place the claimant in a position to charge for the privilege of using the trail, and thereby to prevent the free and unrestricted use thereof by the public, such claims would be fraudulent from their inception and patents thereto could not be obtained under the mining laws. 36-67

II. By Whom.

57. The right to purchase mineral land is restricted to citizens of the United States or those who have declared their intention to become such. 10-641

58. To entitle an applicant, who has declared his intention to become a citizen of the United States, to a mineral patent under section 2319, R. S., it must appear that such intention is a *bona fide* existing one at the time of purchase. 29-627

59. A citizen of the United States acting in the interest of a foreign corporation can not make a mineral entry for the benefit of such corporation. 11-425

60. Can not be entered by a citizen of the United States acting as a trustee for the benefit of an alien corporation. 10-641

61. Under section 2321, R. S., the citizenship of a corporation that applies for a mineral patent may be shown by a certificate of incorporation. 20-116

62. Proof of citizenship on the part of a corporation is made by filing a certified copy of its articles of incorporation; such certificate being made under seal of the officer having custody of the records where said articles are recorded. 27-351

63. A properly authenticated certificate of incorporation, filed by a corporation applying for mineral patent, is sufficient

proof of citizenship under the statute. It is not within the province of the Land Department to determine whether such corporation is authorized under its charter to take patent for mineral lands. 22-83

64. Proof of citizenship is required from the beneficiaries where the applicant for entry is a trustee. 10-641

65. Regulations respecting entry by one applying as trustee. 2-725

66. Entry by alien is not void, but voidable, and while of record segregates the land. 12-345

67. A location by an alien is not void, but voidable; and a subsequent declaration of intention to become a citizen, made by the locator prior to the inception of any adverse right, relates back to the date of the location and validates the same. 29-164

68. Alien, after declaration of intention, may take advantage of his previous acts done under the mining law. 4-565

69. A mining company, on application for patent, must show that it has complied with local requirements in the matter of filing articles of incorporation. 8-195

70. Patent may issue on the application of a company though the location be made by an individual in whom the possessory right apparently remains, where it is shown that in fact said location was made in behalf of said company. 20-58

71. Entry may be made by purchaser in good faith of a mineral location made by a register. 2-754

72. Proceedings to secure patent by one without interest in, or control over, the lands applied for, are without statutory authority, and no rights can be acquired thereunder. 29-602; 34-590

73. Entry of deputy surveyor within the district for which he is appointed not illegal. (See 26-123.) 6-105

74. A surveyor general who orders and approves the survey of a, is disqualified as applicant therefor under section 452, R. S., and regulations thereunder, while holding such office. 24-393

75. A deputy mineral surveyor is within section 452, and disqualified from acquiring title to a mining claim in which he was interested at the time of his official report thereon, and at the date of application for patent. 26-122

76. A deputy mineral surveyor, while holding such office, is disqualified as a mineral entryman. 29-76

77. Under section 452, surveyors general and deputy mineral surveyors are disqualified as applicants for mineral land. 29-333

78. A deputy mineral surveyor who has no interest, real or contingent, in a mining claim at the date of the survey thereof by him, nor at the date of the application for patent thereto, but who subsequently makes entry thereof, does not come within the spirit of section 452. 30-139

III. Location.

79. Direction given for modification of paragraphs 7 and 8 of mining regulations. 29-668

80. Paragraph 7 of regulations approved June 24, 1899, amended, and paragraph 8 abolished. 30-43

81. Must be properly marked on the ground and notice duly recorded. 1-581

82. Is not legally "known to exist" from the location thereof if the boundaries are not specifically marked on the ground and due notice of the location given. 18-259

83. A lode or vein is not "known to exist" within a, from the recorded notice of location, in the absence of a prior discovery of a valuable vein or lode. 23-476

84. Can legally be made only of a piece of land embraced within one set of boundary lines; and two or more tracts merely cornering can not be embraced in a single location. 33-560

85. Under which the requirements of law have been complied with confers a vested right. 2-744; 4-476; 15-571

86. Placer location in accordance with law excludes the land from other appropriation, and a homestead entry irregularly allowed for such land does not impair the right of the mineral claimant. 16-117

87. A location does not amount to an appropriation in such a sense as to preclude inclusion of the land, or parts thereof, within a subsequent location, subject to such existing rights as may be thereafter maintained under the prior location. 34-44

88. The right conferred by a valid mining location amounts to a property capable of being employed or transferred entirely separate and distinct from the fee of the land. 1-615

89. Location excepts the land from subsequent withdrawal under the arid land act of October 2, 1888. 15-418

90. Miners' rights not divested by subsequent appropriation of the land for a military reservation. 1-552

91. A location duly made excepts the land from the operation of a statutory order of withdrawal for a forest reservation. 25-48

92. Any portion of the superficial area within the boundary lines fixed by the location of a valid lode claim, in conflict with a school section, may rightfully be claimed and held under the mining laws. 34-717

93. A mere paper location, not based upon a valid discovery of mineral, does not withdraw the land from allotment, and allotments thereof may be made, due care being exercised not to make allotments of lands which are in fact mineral. 38-409

94. In the absence of an adverse claim it will be presumed that a lode exists in land legally located as a lode claim. 21-438

95. An amended location by one who has parted with title to the claim can not be recognized as securing any right to him. 18-536

96. Valid location can not be made on a possessory right acquired wrongfully. 3-267

97. Surface ground is an incident of the lode, and a location of surface ground which does not include any part of the lode claimed to have been discovered is invalid. 2-744

98. The right of the locator to follow the strike of the lode ceases at the point where the lode crosses the line of the location; but the validity of the location is not affected by the fact that the lode crosses the side line thereof. 29-662

99. A location with discovery shaft on vacant ground may not include said ground and noncontiguous ground on the same vein or lode, the two parts of the

junior location being separated by an intervening patented claim. 2-735, 736

100. In the case of a location on a horizontal or blanket vein, the apex of the lode is coextensive with the distance between the side lines of the location, and every part or point of such apex within these limits is as much the middle of the vein, within the intent and meaning of section 2320, R. S., as any other part. 29-689

101. There is no warrant in the mining laws for extending, arbitrarily and without any basis of fact therefor, the vein or lode line of a location in an irregular and zigzag manner for the purpose of controlling the length or situation of the exterior lines of the location to suit the convenience, real or imagined, of the locator. 35-22

102. The location as made upon the surface of the ground by the locator determines the extent of his rights below the surface, and the end lines, as established by him on the surface, place the limits beyond which he may not go in the appropriation of any vein or veins along their course or strike, except in a case where it is developed that the location has been placed, not along, but across the course or strike of the vein, in which event the side lines become the end lines, and the end lines the side lines of the claim. 29-668

103. A location made upon land covered by a subsisting mineral entry becomes effective upon the cancellation of such entry, if rights thereunder are then being and are thereafter asserted according to the mining laws. 32-477

104. A location upon land not at the time regularly subject thereto, because covered by a subsisting though invalid mineral entry, may nevertheless, if maintained in good faith, and the land subsequently becomes subject to such location, be permitted to remain intact, as having attached on such date, if at that time there be no adverse claim. 33-30

105. The location of a mining claim can be made only upon the public lands of the United States; and there is no authority for placing the lines of a location within, upon, or across other claims embracing

lands which have been patented or regularly entered under the public-land laws and have thereby become the property of private individuals. 30-191

106. The location lines of a lode claim are used only to describe, define, and limit property rights in the claim, and may be laid within, upon, or across the surface of patented lode claims for the purpose of claiming the free and unappropriated ground within such lines and the veins apexing in such ground, and of defining and securing extralateral underground rights upon all such veins, where such lines (a) are established openly and peaceably, and (b) do not embrace any larger area of surface, claimed and unclaimed, than the law permits. 30-420

107. The location lines of a lode claim may be laid within, upon, or across the surface of patented agricultural land for the purpose of claiming the free and unappropriated ground within such lines and the veins apexing in such ground, and of defining and securing extralateral underground rights upon all such veins, where such lines (a) are established openly and peaceably, and (b) do not embrace any larger area of surface, claimed and unclaimed, than the law permits. 30-481

108. A junior lode location is not invalidated by the fact that its end lines and corners are laid within or upon the surface of a valid senior location. 27-105

109. Rights granted to locators of lode claims, with respect to veins, lodes, and ledges found within the limits of their locations, relate to veins, lodes, and ledges the tops or apexes of which lie within the surface lines of the locations extended downward vertically, and to no other; and these rights are exclusive, and follow the veins, lodes, and ledges throughout their entire depth within the vertical end lines of the locations, where no adverse claim existed on May 10, 1872, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of the locations. 33-142

110. A location based upon discovery on the dip or downward course of a vein or lode whose top or apex lies inside the vertical lines of a prior subsisting valid location is wholly illegal and void; and

where it is alleged that an applicant's location is so based it is the duty of the Land Department to determine that question before the issuance of patent. 33-142

111. Where a mining claim has been officially surveyed and the survey becomes the basis of patent proceedings which are carried to entry, an amended location embracing additional ground, even though preceding the entry, can not be recognized as the subject of further patent proceedings to include the additional tract as part of the original claim. 33-612

112. A lode location subsequent to, and in conflict with, a placer location, but made prior to application for placer patent, does not, when based alone on a discovery outside the limits of the placer claim, and at one side thereof only, establish the fact that the lode or vein thus claimed was known to exist within the boundaries of said placer at the date of application for patent thereto. 26-622

113. The discovery and location of a placer establishes the right to possession of the superficial area within its boundaries for all purposes incident to the use and operation of the same as a placer; such location, however, does not give title or right of possession to lodes within its limits, or preclude the right of discovery and location thereof by others. 23-95

114. In a controversy between conflicting claimants to the same land, arising upon protest by a mineral locator against an application to purchase under the act of June 3, 1878 (amended by act of Aug. 4, 1892), where it appears that the mineral location is based upon discovery within its limits of a vein or lode of quartz, bearing copper and gold, that the same is in all other respects regular, and that the time intervening between the date of the location and the filing of the application to purchase under said act was so short as not to afford the mineral locator a reasonable opportunity to develop his claim sufficiently to ascertain with certainty the extent or value of the mineral deposit contained therein, such location is a "mining claim" within the meaning of the proviso to said act, and the land embraced therein is not subject to purchase thereunder.

115. In a controversy between conflicting claimants to the same land, arising upon protest by a mineral locator against an application to purchase under the act of June 3, 1878 (amended by act of Aug. 4, 1892), where it appears that the land, when surveyed, was returned as of little, if any, value for agricultural purposes and chiefly valuable for the timber thereon, and the final proof submitted in support of such application appears to be sufficient in form and substance, the burden of proof at a hearing upon such protest rests upon the protestant. 31-400

116. Where in such a case the evidence fails to show that the land in controversy contains valuable deposits of mineral, and it appears that the discovery on the strength of which the mineral location was made consisted of the digging of a prospect hole to the depth of 10 feet, in which about 2 cents' worth of gold was found, and ample time and opportunity were afforded prior to the hearing to test the extent and value of the alleged mineral deposits, without any systematic or continuous prospecting or working of the claim having been done, it can not be held that such a location is a mining claim within the meaning of said act of June 3, 1878. 31-400

117. Lands included in a valid mining location at the date of the Executive order of May 17, 1884, setting apart certain territory in Arizona as an Indian reservation, come within the excepting clause of said order, and whatever privilege of going upon or across said reservation may be accorded to persons claiming an interest in such excluded lands under a mining location existing at the date of the order, for the purpose of enabling them to maintain and develop their claims under the mining laws, must also be accorded, on equal terms, to all persons claiming an interest therein under a subsequent relocation under those laws. 30-515

118. In the absence of an organized mining district, the record of a mineral location should be made in the recorder's office of the county in which the land is situated. 22-83

119. Surveyors general required to note date of location on approved plats of survey. 3-40

120. Patent will not issue for location within prior patented lines. 1-593

121. Whether a "location" by the local officers is within rule prohibiting "entries" by them: *Quare*. 2-754

122. The Land Department has full authority, of its own motion or at the instance of others, to inquire into and determine whether mining locations within National Forests were preceded by the requisite discovery of mineral and whether the lands are of the character subject to occupation and purchase under the mining laws, notwithstanding the locator has not applied for patent; and if the locations be found to be invalid, the lands covered thereby will be administered as part of the public domain, subject to the reservation for forest purposes, without regard to the locations. 38-59

IV. Relocation.

123. The failure of a mineral claimant to perform the requisite annual work on his claim renders the same subject to relocation. 23-267

124. Relocation of the land embraced within a subsisting mineral entry, based upon default in annual assessment work prior to allowance of entry, can not be made. 29-491

125. A relocation subsequent to allowance of entry does not constitute an intervening adverse right, and upon rejection of a protest by the relocater against the entry he is not entitled as a matter of right to appeal, being a protestant without interest. 39-574

126. If work is renewed on a claim after it has been open to relocation, but before such relocation, the rights of the original owners stand as though there had been no default. 8-388

127. The validity of a relocation can not be questioned by the original locator in a proceeding instituted to determine whether said locator has complied with law in the matter of annual expenditure. 7-506; 10-157

128. The illegality of a relocation should be shown in a proceeding for that purpose. 7-506

129. A hearing may be ordered on a protest filed by a prior applicant against

an entry based upon relocation, alleging that the claim was not subject to relocation, and the countercharge that the right of protestant had been finally excluded by adverse proceedings prior to said relocation. 10-534

130. Claim is subject to, in the absence of annual expenditure until entry is perfected. 14-43

131. Abandonment is admitted if, after relocation application alleging it, the original locators fail to adverse; if adverse claim is filed, the question is a proper one for the courts. 2-698

132. No proof of abandonment is required of relocators alleging it in their application. 2-698

133. The relocation of an erroneous location allowed by the laws of Colorado must be substantially the same as the original location; additional ground may not be included if existing rights (by color of law) are interfered with. 2-740

134. In enlarging a location (placer) the relocation is restricted to 20 acres additional. 2-763

135. Relocation of claims never adjusted to the public survey allowed. 4-225

136. An adverse relocation, made during the pendency of an order holding the original claim for cancellation, gives the locator no standing to be heard as against the right of the claimant. 19-356

137. The continuity of possession is not disturbed by an attempted relocation made at a time when there was no statutory ground therefor. 25-447

138. Rights under the amended location authorized by the Colorado statutes depend upon the locator's ownership of the original location, and if at the time of such amended location the original is owned, wholly or in part, by others, their title will not be divested by the amended location. 26-484

139. The title acquired by original location can not be divested by leaving out of the certificate of amended location the name of an original locator, unless done with the knowledge and consent of said locator. 29-208

V. Application.

140. Provisions of circular of May 11, 1885, extended to applications prior to December 4, 1887. 5-468

141. Circular of March 24, 1887, as to proof required on application for patent. 8-505

142. Paragraph 42 of regulations of March 29, 1909, amended. 36-225; 40-347

143. Applications should be received in the order presented. 1-562

144. Application held without action during absence of register, reserves the land until final action thereon. 9-212

145. Reserves the land from subsequent entry. 2-704, 722; 15-571

146. An application for mineral patent should not be allowed for land embraced within the prior pending application of another. 26-81;

29-226; 31-59, 140; 32-220

147. An application for patent for land embraced in an existing mineral entry should not be accepted or entertained. 29-114

148. Application for entry not properly followed up confers no exclusive rights. 4-30

149. Application may be filed only by a person, association, or corporation who has, or have, *claimed and located* a piece of land for mining purposes and complied with the mining laws in other respects, or by the grantee or grantees of such locator or locators. 32-217

150. Where application is filed by an association of persons, one of whom is without interest in any one or more of the claims embraced in the application, the proceedings had thereunder are to the extent of such claim or claims without statutory authority, and a nullity. 32-217

151. To sustain an application for mineral patent, as against persons alleging the land to be nonmineral, it must appear that mineral exists in the land in quantity and of value sufficient to subject it to disposal under the mining laws. 34-596

152. An application properly filed and duly followed by publication and posting of notice is *per se* a segregation of the land, and if it is afterwards sought to relocate said land on the ground of abandonment, the locator should be first required to establish the fact of abandonment. 21-219

153. The provision of section 2325, R. S., that an application for patent to a mining claim shall be "under oath," and the pro-

vision of section 2335, for the verification of such application "before any officer authorized to administer oaths within the land district" where the claim is situated, are mandatory, and their observance is essential to the jurisdiction of the local officers to entertain the patent proceedings.

35-455

154. A notary public whose jurisdiction extends throughout a county lying partly within and partly without a land district, is an "officer authorized to administer oaths within the land district," within the meaning of section 2335, R. S., and where the application for patent to a mining claim located in the portion of the county lying within the land district, together with the affidavits filed in support of such application, are sworn to before such notary without the district, but within his jurisdiction, they are not for that reason defective. (See 34-314.)

33-238

155. The mere fact that the application for patent to a mining claim and the affidavit as to the posting of notice on the claim, executed by the duly authorized agent of a corporation, were verified before a notary public who was also secretary of the corporation, is not sufficient reason for requiring new application and affidavit, unless the notary public was at such time also a stockholder or otherwise beneficially interested in the corporation.

35-174

156. Even if it be conceded that the act of June 29, 1906, amending section 558 of the Code of the District of Columbia, and declaring "that no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent or in which he may be in any way interested before any of the departments aforesaid," is applicable outside of the District of Columbia, the mere fact that an application for patent to a mining claim, and the affidavit of posting of notice on the land, were verified before a notary public who was one of the attorneys for the claimant in prosecuting the patent proceedings, does not render them absolutely null and void, but voidable only, and, where there is no question as to the fact of notice, they are subject to

amendment; and, when amended to conform to the requirements of the law and regulations, entry allowed upon the voidable affidavits may be permitted to stand.

40-198

157. There is no authority of law for an agent to make oath to an application for patent to a mining claim, except under the act of January 22, 1880, which provides for such oath by an agent only where the applicant is not at the time a resident of or within the land district where the claim applied for is situated; and where an agent makes oath to an application for mineral patent under conditions not within the terms of said act the application and proceedings thereon are invalid, and the invalidity can not be cured by filing a new application sworn to by the applicant, nor can entry allowed upon such invalid application and proceedings be submitted to the board of equitable adjudication.

35-434

158. A patent is not essential to the enjoyment of a, held under a valid location; hence the failure of a mineral applicant to prosecute his application for patent is not in itself an abandonment of his claim.

28-348

159. The mining laws contemplate that proceedings under an application for patent should be prosecuted to completion within a reasonable period after the required publication, or after the termination of proceedings on adverse claims, if any are filed, and failure so to do constitutes a waiver of rights secured under the application.

29-62, 308, 401, 689

160. Where an application for patent is abandoned as to a tract of land included therein, or rights obtained by earlier proceedings under the application have been waived by delay to duly prosecute the same to completion, the application should, as to such tract, be rejected.

31-59

161. By failure to prosecute a mineral application to completion within a reasonable period after publication, the right to the mining claim is not lost, but the right to the assumption declared by section 2325, R. S., that no adverse claim exists and that applicant is entitled to a patent upon payment for the land.

29-359

162. Where an applicant, after the close of the period of publication, delays mak-

ing entry until beyond the end of the calendar year, his laches, in the presence of the alleged relocation of the claim, are fatal to the entry. 31-69; 32-200

163. The length of time between the end of the period of publication, or the finality of pending adverse proceedings in court or protest proceedings in the Land Department, and the date of entry, is immaterial, so long as entry is made before the close of the then current calendar year; and the principle with respect to the completion of the patent proceedings is the same whether the time remaining to the applicant within which to make entry as aforesaid be only a day or several months. 32-200

164. An applicant for patent to a mining claim must proceed with diligence to complete his patent proceedings; and where not prosecuted to entry until more than three years after completion of the publication of notice, and no satisfactory reason is given for the delay, the entry should be canceled. 40-542

165. While a mineral entry allowed on insufficient showing of title in the applicant may be permitted to stand where the applicant subsequently acquires the complete title, he will not be allowed additional time in which to secure outstanding interests where there has already been an unexplained delay of more than three years between publication notice of the application for patent and completion of the entry. 40-543

166. While an applicant for patent for a mining claim must diligently prosecute the patent proceedings to completion, yet where the local officers, upon a showing deemed by them sufficient, have in fact allowed entry although not within the calendar year in which the publication of notice of the application was completed, and there is no intervening adverse claim, the entry should not be canceled upon the protest of one alleging relocation of the land subsequent to allowance of the entry. 39-574

167. A mineral applicant by failure to prosecute his application to completion within a reasonable time after the period of publication waives all rights secured by the earlier proceedings on his applica-

tion; and in a case arising on the protest of one claiming under an alleged adverse right acquired after the period of publication, where this rule has been applied by the department, the subsequent withdrawal of the protest will not operate to relieve the applicant from the consequences of his laches. 29-488

168. The failure of an applicant for patent to prosecute his application for completion, by filing the necessary proofs and making payment, within a reasonable time after the expiration of the period of publication, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application. 30-202

169. The proceedings necessary to the completion of an application for patent, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed. 30-202

170. The principle that where an application for patent can not, by reason of a pending suit in court based upon an adverse claim or of a pending protest before the Land Department, be prosecuted to completion by making payment and entry, and no opportunity has been afforded therefor, the applicant can not be charged with laches and held to have waived and lost the rights acquired under his application, can be invoked only where the barrier interposed to entry is such as the applicant can not himself remove, or of right cause to be removed. 33-132

171. The decisions of the department holding that the provisions of the mining laws relating to the patenting of mining claims contemplate and require that an applicant for patent shall proceed with diligence to complete his patent proceedings, and that a failure to do so constitutes a waiver of all rights under such proceedings, are notice to the world, and mineral applicants must govern themselves accordingly or suffer the consequences. 35-27

172. Delay in perfecting a right to mineral patent under a judgment obtained in opposition to the application of another, as well as delay in perfecting such right under one's own application, may amount to laches such as will entail a loss of the right acquired by the prior proceedings.

29-461

173. Whenever proceedings under an application for patent have failed, by reason of a default incurable as to them, the application stands rejected, but may, if not in itself or for any extrinsic reason fatally defective, be made the instrument of renewed proceedings. It is not, however, in the interval a pending application, and can be considered as renewed, and as again taking effect, only as of the date proceedings under it are actively resumed.

34-72

174. Where, because of an incurable default on the part of the applicants for a mineral patent, entry for one of the several claims in common embraced in the application is refused, the refusal is in effect a rejection of the application to the extent of such claim.

32-220

175. The rejection of an application because of failure to establish the presence in the land involved of mineral deposits of such extent and value as to justify the issuance of patent, does not amount to a determination that the location upon which the application is based is invalid.

33-660

176. Abstract to approximate date of application.

4-374, 515

177. Questions on applicant's abstract are between the Government and applicant, and can not be raised by a protestant who sets up a specific defect, but has no interest in the alleged adverse right, and did not assert any adverse claim within the statutory period.

21-30

178. The decree of a court, relied upon as the basis of a sheriff's deed under which a mineral applicant claims, will be held to cover the property, where said decree, aided by the pleadings and record of proceedings thereon, identifies the land. (See 21-544.)

21-30

179. An abstract of title filed by a mineral applicant is insufficient, where a sheriff's deed is relied upon, and the decree under which the sheriff's sale is made

does not direct the sale of the property in question.

21-544

180. Section 2325 contemplates that applicants for patent shall at the date of the application have the full possessory right or title to the claim. (See 37-715.)

36-36

181. Relinquishment of land embraced in application runs to the Government.

27-369

182. A relinquishment of an adverse claim should not be denied consideration on the ground that the accompanying abstract is not brought down to the date of relinquishment; but due opportunity should be given to file an amended abstract.

20-211

183. Application embracing more than one lode location will not be received. Circular June 8, 1883.

2-725, 726

184. Application for patent or survey may embrace several contiguous locations.

5-199

185. Where a number of valid lode locations, forming upon the ground a contiguous group, are embraced in a single application for patent, upon which due publication and posting of notice has been had, and the application is rejected as to one of the claims because of insufficient patent improvements, the remainder of the claims, although not in themselves contiguous, may be retained and embraced in a single entry and patent.

40-17

186. Placer application not limited to single location.

4-221, 284

187. Application may embrace several locations.

2-772; 6-808

188. An entry may be allowed on a new application embracing contiguous locations (with a view to equitable action) in the place of one made on separate applications and a consolidated survey.

15-532

189. A single application may embrace, and a single patent issue for, placer and lode claims, where the land lies in one body or piece, has been claimed or located for valuable deposits, and the several claims have a common ownership.

29-7

190. Application in conflict with prior pending claim not received.

1-542

191. Application for lode patent within limits of patented placer, alleging that existence of the lode was known at date of

placer application, should be received subject to adverse proceedings of placer claimant. 1-564

192. An application for land partly within a prior townsite patent must be restricted to the land not in conflict. 9-83

193. An application for a lode patent should not embrace land lying within and beyond an intersecting patented mill site. (See 31-359.) 28-120

194. An application for a lode patent may embrace ground lying on opposite sides of an intersecting patented mill site, provided the lode or vein upon which the location is based has been discovered in both parts of the lode claim. 31-359

195. A mineral application should not be allowed for land embraced within a prior subsisting homestead entry. 29-279

196. An applicant for patent to a valid lode location who excludes from his application a portion of his claim in conflict with a placer location, does not thereby waive or surrender any of his rights with respect to the possession and enjoyment of any part of the surface of his location lying without the conflict, or with respect to any veins, lodes, or ledges, the tops or apexes of which may be found, at any point outside the conflict, to lie within the surface lines of his location extended downward vertically, unless it clearly appears that by such exclusion he intended to waive or surrender such rights. 30-482

197. A mineral entry of record, dormant for seven years, held to bar an application. 2-769

198. Application allowed by the receiver instead of the register not disturbed. 1-545

199. Proof of incorporation furnished by a mining company under a patented entry, and of record in the General Land Office, may be accepted in a subsequent application by said company. 9-48

200. For placer is barred by a homestead entry of record until after a hearing on the character of the land. 2-712

201. That a lode application expressly excludes land in conflict with a prior entry will not operate to except such land from the claim if in fact there is no conflict. 13-163

202. An applicant for patent who excludes or omits from his application ground, the right to the possession of which has been regularly and judicially determined in his favor, and for which he can obtain patent without embracing it in such application, does not by such exclusion or omission invalidate or waive any claim or right which he would otherwise have. 27-375

203. Rule that application by an association of persons may not be for more than one location, or for more than 160 acres, does not extend to lands containing deposits of borax, soda, alum, etc., in California, Nevada, Arizona, Utah, and Wyoming. 2-708

204. It is not incumbent upon the General Land Office, in considering a mineral application rejected by the local office on account of a prior conflicting application, to call upon said office for the record in the case of such conflicting application, where the report of said office with respect thereto is not specifically traversed. 29-226

205. An application which includes ground embraced in a prior or pending application should not be received as to the ground in conflict; but where such application has been received, and proceedings had thereon, and an adverse claim has been filed and suit brought, the application will not be rejected and the parties required to begin proceedings anew, but the suit will be recognized as a stay of proceedings on the application until the suit shall have been finally determined, after which the application will be adjudicated in accordance with that determination. 31-140

206. The pending suit in court must be such as the statute contemplates, brought and maintained "to determine the question of the right of possession," and have for its end the decision of a *controverted* question thereof between the parties. 33-132

207. While the Land Department may suspend proceedings upon an application for patent pending determination of a suit in court which involves the land applied for, though such suit is not based upon an "adverse claim" within sections 2325 and 2326, R. S., yet, ordinarily, it should

not exercise this power unless an adjudication by the court of the questions involved in the suit would aid in the disposal of a protest filed in the Land Department against the application. 33-187

208. An application embracing a lode within a placer claim for which patent application is pending can not be permitted to proceed beyond the point of filing in the absence of a determination by the Land Department that the lode was known to exist at the date of filing of the placer application; and the law does not contemplate a proceeding to that end before the Land Department, or the acceptance by the latter of such lode application, when an adverse suit against the placer applicant has been begun by the lode claimant, during the pendency of which all proceedings in that department must be stayed. 34-72

VI. Survey.

209. Survey of, instructions. 1-693;
3-540, 542

210. Instructions of July 29, 1911, respecting plats of survey. 40-216

211. Paragraph 37 of mining regulations amended. 33-366

212. The signature to an application for survey should be in the handwriting of claimant, his agent, or attorney. 29-718

213. No deposit is required to accompany an application for survey in the field, the applicant being free to contract as he pleases; for platting or office work a deposit must be made. 2-773

214. It rests in the discretion of the surveyor general to regulate the amount required as a deposit to cover the expenses of office work on a survey. 16-105

215. In case of an order for amended survey there is no authority for requiring the deputy surveyor to execute such survey without further compensation. 26-575

216. The terms upon which a mineral survey is made are matters of private contract between the owner of the claim and the mineral surveyor, and not enforceable by the Land Department which, in case of default on the part of the surveyor, has no power to designate another surveyor to make a correction or amended survey at the expense of the bondsmen of the defaulting surveyor, or to require the

latter to correct his work without expense to claimant, or to impose upon claimant the condition that an amended or correction survey, for which it may devolve upon him to apply, shall be made without expense to the surveyor who made the original survey. 37-95

217. In event a mineral surveyor neglects or refuses to make necessary corrections or amendments of a survey executed by him, it devolves upon claimant to apply for an amended survey to meet the requirements. 37-95

218. Money deposited for the cost of office work and remaining unexpended may be applied on new. 8-102

219. Section 2334, R. S., was intended to protect applicants from unjust charges for survey and publication. 2-773

220. Can not be allowed if the location is not properly marked and recorded. 1-581

221. Survey must follow the location notice upon which it is ordered. This rule applies to amended as well as original locations. 7-81

222. The official survey must be in accordance with the notice of location as of record at the time of the order authorizing the survey. 22-83

223. Survey should exhibit boundaries and conflicts. 5-199

224. Where the survey did not follow the amended location the entry should not be canceled, but a new survey required. 7-81

225. Evidence may be submitted in explanation of an apparent discrepancy between the survey and the claim as marked upon the ground and described in the location. 7-169

226. If not properly described in the survey, it is incumbent upon the Secretary, if the matter comes before him, to require a new survey. 23-395

227. A deed to the State of part of the land embraced in a placer entry makes an amended survey of the mining claim necessary prior to the issuance of patent. 27-121

228. Where in the entry of a placer claim embracing legal subdivisions exclusions have been made on account of conflicting patented lode claims, a survey is necessary in order that the excluded

tracts may be accurately described in the placer patent. (See 31-64.) 30-227

229. Where the certificate of entry of a placer claim describes the land in terms of the public survey and the surveys of excluded mining claims, such description is sufficiently accurate, and said surveys, taken together, furnish the necessary data for the computation of the area of the land and the preparation of an accurate description to be incorporated in the patent. 31-64

230. In case of an application that embraces more than one location, the survey and plat must so exhibit the boundaries as to clearly define each location. 29-585

231. Land below high-water mark of a meandered stream should not be included in the survey of a mining claim. 29-585

232. Claims upon unsurveyed lands and bordering on bodies of water, which under the regulations governing the survey of public lands would be meandered upon extension of the public surveys, should be meandered to conform to what would be the line established by a public survey and upon which the public-survey lines would be closed. 33-593

233. Error in boundary of claim as shown by survey stakes may be corrected through the surveyor general's office. 4-117

234. Survey must be made by actual measurement on the ground. 6-718

235. If during the pendency of a mineral application the monuments marking the corners of the claim are destroyed by accident or design, the applicant need not be required to reestablish said corners before issuance of patent. 20-43

236. Survey must distinguish the several locations and exhibit the boundaries of each if the application embraces more than one location. 6-808

237. Object of establishing mineral monuments. 7-392

238. Amended survey will be required where no connection is shown with a mineral monument or a corner of the public survey. 7-475

239. The field notes should connect the claim with a corner of the public surveys, and in the absence of such connection an amended survey and new notice of application will be required. 22-715

240. An amended survey and republication of notice will be required where it is found that the land embraced in the application, as set forth in the official survey and published notice, is incorrectly described. 17-565

241. A connecting line run to a section corner on a township line is sufficient, though such township may not be subdivided. 10-391

242. Entry submitted to board of equitable adjudication in case of erroneous description of connecting line where the error resulted from an erroneous marking of a corner located by public survey. 6-646

243. Amended survey may be allowed where, through error of the surveyor, the connecting line is incorrectly located, but the claim is sufficiently identified by the description given and good faith is apparent. After such amendment the entry may be equitably confirmed. 6-718; 10-173

244. The survey is not vitiated by the fact that the connecting line is more than two miles in length, where each corner of said claim is connected, by the survey in question, with other claims that have been officially surveyed. 25-262

245. A new survey under the circular of December 4, 1884, will not be required where one in accordance with existing practice had been approved by the surveyor general prior to the receipt of said circular. 7-318

246. A survey whereby record conflicts with prior surveys are made to appear which are alleged to have no existence in fact, can be approved by the surveyor general only when it is determined, agreeably to the principle of the case of *Sinnott v. Jewett*, what conflicts therewith, if any, must be recognized, and the conditions are shown accordingly. 33-183

247. In the survey of, the end line must terminate at the point where the lode in its onward course or strike intersects a senior location; and the regulations of December 4, 1884, to this effect are not in conflict with statutory provisions. 15-67

248. In a survey that conflicts with a prior lode claim, where the ground in conflict is excluded, the applicant is limited to a line passing through the point

where the lode intersects the exterior line of the senior location. 3-540;

8-361; 11-236, 250

249. In case of an entry in conflict with a prior preemption the land that lies beyond the point where the lode intersects the preemption claim must be excluded from the survey. 15-309

250. A mining claim legally located may be surveyed according to the lines of the location as marked on the ground, even though the surveyed lines may in part or in whole fall upon lands patented prior to the survey. A patent issued upon such a survey should exclude all lands within the lines of the survey which are also included in the prior patent. 31-121

251. For the purpose of including ground claimed under a lode location made upon public land, and valid when made, the end line of the survey of said lode claim may be established within the boundaries of a patented placer. 22-284

252. To hold land lawfully included in a location the lines of survey may be laid upon the surface of conflicting and excluded claims under subsequent locations. 29-156

253. The end line of a survey of a lode claim may be laid upon the surface of a prior location in order to hold land embraced within the lines of a valid location; but in case the prior location is excluded the end line may not be placed beyond the point where the lode in its onward course or strike intersects the exterior boundary of the excluded ground. 28-322

254. To include land properly subject to location the survey may be extended entirely across a prior excluded location, and the end line established at a point within a junior excluded location. 29-256

255. Entry should not be allowed for a lode claim that includes land embraced in a senior location or is intersected by an excluded mill site. 15-504

256. Survey of consolidated claim embracing several contiguous lode locations allowed. 4-362

257. In requiring an amended survey the applicant should be informed that his entry will be canceled if the requirement is not complied with in a specified period. 7-475; 16-105

258. Proceedings based upon a false survey and publication are invalid. 1-593

259. In case of a mineral patent based upon an erroneous survey, a new patent can not issue without a proper application under a corrected survey; and if the patentee refuse to surrender the patent so issued by mistake and reconvey the land, suit to recover title should be instituted by the Government. 22-101

260. The Land Department has no jurisdiction to correct an alleged erroneous survey of a patented placer, while the patent is outstanding, so as to include land not applied for or surveyed. 24-512; 31-121

261. An official survey of a placer must be furnished, if the description of the lands for which patent is asked can not be made to conform to legal subdivisions. 29-368

262. A portion of an irregular legal subdivision is not sufficiently identified to enable the department to accurately describe the same in a patent by an attempted description thereof in terms of the public-land surveys, and where patent is sought to a placer mining claim embracing a portion of an irregular legal subdivision or lot an official survey of the particular portion claimed will be required. 34-9

263. Where an amended survey is required within a specified period, the entry should not be canceled prior to a report from the surveyor general's office; and an entry so canceled must be reinstated, if it appear that the mineral applicant had, in due time, obtained from the surveyor general an order for said survey. 26 643

264. If, after the issuance of an order for survey, a relocation is made, embracing ground not included in the original order, a new order must be obtained, which should bear its proper number in the current series. 29-718

265. The returns of the surveyor general in surveys of mining claims made under the mining laws are conclusive as to the quantity of lands embraced in such claims. 31-64

VII. Notice.

266. There can be no valid entry upon an application for patent until notice shall have been lawfully given. 31-415

267. An adjudication by the Land Department that the notice of application for patent is fatally defective is equivalent to a determination that an entry based upon such application is illegal and should be canceled. In such case the entry will be treated as though formally canceled as of the date the notice was finally adjudicated to be insufficient. 31-415

268. In giving notice of application the required period of time must be covered by each form of notice. 5-510

269. Notice must give the course and length of a line connecting the claim with a corner of the public surveys or with a mineral monument. 5-685; 14-294

270. A published notice of application for patent that shows no connection of the claim with a mineral monument, or corner of the public survey, is fatally defective. 29-592

271. In the notice of application for patent the description of the claim should include the course and length of a line connecting said claim with the public survey or a mineral monument. 7-392

272. Application for patent can not be allowed if the description of the claim in the published notice is not in accordance with the official field notes of survey. 14-45

273. The published notice is sufficiently definite in the matter of showing the connecting line where it identifies the claim by connection with a corner of a patented townsite which is also the corner of a patented placer, both of which are connected with a mineral monument. 14-105, 294

274. Notice of application for patent will be held sufficient where the locus of the claim is designated therein according to the official survey, which survey ties the claim to what is generally believed to be a corner of the public survey, even if it should be ultimately shown that such is not the true corner. 3-74

275. Where the notice of an application for patent gives no connecting line be-

tween the claim and a corner of the public survey, and does not otherwise designate the situation of the claim upon the ground with substantial accuracy, a new notice will be required. 30-481

276. The notice of an application for patent will be held sufficient in the matter of descriptive information if it complies substantially with the law and regulations in force at the time. 22-675

277. Although the notice does not contain data sufficient to indicate the situation of the claim with substantial accuracy, nevertheless, so far as that objection is concerned, the patent subsequently issued is voidable merely, not void, and until vacated by appropriate judicial proceedings is of full force and effect. 33-91

278. New notice must be given if a new survey is required, and if during the period of republication an adverse claim is filed it will be entitled to consideration. 23-395

279. New publication and posting of notice required where a mineral entry embraces land excluded from the claim in the notice on which entry was allowed. 22-711

280. A notice that does not connect the claim with the public surveys is insufficient, and the defect can not be cured by equitable action in the presence of adverse claimants who have not had legal notice. 10-198

281. A location on unsurveyed land, connected by course and distance with a mineral monument, requires, on application for patent, such connection to be shown in the published notice. 22-244

282. In determining the sufficiency of the published notice it must be taken as a whole, and if when so considered the situation of the claim on the ground is designated with substantial accuracy, the notice must be held sufficient. 27-104; 28-240; 29-491

283. The notice, as posted and published, in addition to other details, should state the names of the nearest or adjacent claims, and where the record of the claim may be found. (See 24-191.) 22-624

284. The field notes of survey and application for patent, together with the notice, should correspondingly disclose with

mathematical accuracy the amount of land included in a, and the acreage of the entry be determined accordingly. 22-711

285. The published notice will not be deemed insufficient on account of failure to give the names of adjoining claims, where the numbers of said claims are furnished. 19-245

286. Not necessary to give names of all adjoining and conflicting claims in notice, but only such as are shown in the plat of survey. 29-250

287. The notice should, in stating the names of adjacent claims, include unsurveyed as well as surveyed claims. 24-191

288. Failure to include in the posted and published notice the names of the nearest or adjacent claims, in strict accordance with paragraph 29 of regulations, will not render new notice necessary, where the notice as given is substantially in conformity with the practice theretofore observed. 24-191

289. Failure of an applicant to mention in his posted and published notices the names of adjoining claims, as shown by the field notes and plat of the official survey of the applicant's claim, is a fatal defect, and requires new notice. (See 28-240.) 27-56

290. Under the rule in *Gowdy v. Kismet Gold Mining Co.*, 24 L. D., 191, failure to include in the published notice the names of adjoining claims will not render such notice insufficient, where publication is made or begun prior to June 1, 1897, and is substantially in accordance with the practice theretofore existing. 28-229, 240

291. The mining laws do not require that notice of application for patent by a corporation shall designate the State or Territory under the laws of which the corporation was organized. 34-568

292. The law does not provide, nor any regulation direct, that the notice shall contain a citation to adverse claimants, or notice of the time within which adverse claims must be filed. 28-550

293. The regulations do not require that the notice, as posted or published, shall contain a description of the lode line, reference being made in these notices to the official plat, on which is indicated the general course or direction of the vein. 29-662

294. On application for reinstatement of a canceled mineral entry, where it appears that parties are claiming adversely thereto, the applicant should publish notice of his application for 60 days, in the same manner as notice for an original application for patent is required to be published. 28-451; 29-470

295. The published notice should substantially conform to the notice as posted on the claim, and contain sufficient correct data to put persons of ordinary intelligence and prudence interested in the land applied for upon inquiry, and "to enable any one interested to ascertain with accuracy the position of the claim." 32-383

296. The notice of application must be published in the newspaper nearest the claim. 14-138

297. The discretion vested in the register to designate a newspaper within which a notice of application must be published is subject to review and control by the General Land Office and the department. 15-330

298. The discretionary power lodged in the register to designate the newspaper in which notice shall be published, is subject to review by the commissioner and the Secretary, and where it is found that there has been an abuse of such power, a new publication will be ordered. 32-359

299. The selection of a newspaper rests in the sound discretion of the register; other things being equal, the convenience of the applicant should be consulted. 2-758

300. The register may exercise his official judgment in the selection of a newspaper nearest to the claim for the publication of notice of an application. 10-655; 16-178; 26-145

301. In the selection of a newspaper the register, in the exercise of a proper discretion, may designate a paper that he regards best for the purpose of giving the greatest publicity to the notice, even though it may not be the paper nearest to the land. 1-570; 17-558

302. By the newspaper published nearest a mining claim, in the contemplation of section 2325. R. S., is meant the newspaper of established character and general circulation in the vicinity of the claim which is nearest in point of practi-

cable accessibility; that is, nearest by the distance from the claim involved over the most nearly direct traversable route, and over which the editions of the paper are or may be transported by the usual and available means of conveyance. The distance in contemplation is that which must actually be traveled to bring the paper into the neighborhood of the claim, in order that the intended office of the notice may in that vicinity be performed.

34-281

303. Where two newspapers are published practically the same distance from a tract for which patent is sought under the mining laws, both having a general circulation in the vicinity of the land, the register is intrusted with a discretion to determine which of the two is calculated to afford the widest publicity, in that vicinity, of the notice of the application for patent, and to designate the one so determined to best subserve that purpose, regardless of the fact that the rates of the paper so designated, for publication of the notice, are less reasonable than those charged by the other newspaper. 40-190

304. The publication of the notice is under the direction and supervision of the register; but it is the duty and privilege of the applicant to see that in such publication there is due compliance with respect to all essential requirements.

27-105

305. Each of the three concurrent details in publication of notice must be equally observed. 1-573

306. The notice required to be posted on the claim is an integral and essential part of the notice of the application, which the statute requires to be contemporaneously posted for 60 days on the claim, and in the local land office, and to be published in a newspaper. If any one of these three notices is insufficient, they are all rendered valueless. 29-467

307. The requirement that an applicant for patent shall "post" a copy of the plat, together with a notice of his application, "in a conspicuous place on the land," contemplates that both shall be prominently and openly displayed, in such position that they can, without being removed, be conveniently inspected and read by the public. 36-199

308. The publication is not sufficient if the notice does not appear in every copy of the paper of each issue for the statutory period. 6-320

309. Ten insertions required where the notice is published in a weekly paper. (See 28-224.) 2-710; 11-457

310. Where publication is made under a former practice recognizing nine insertions in a weekly paper as sufficient, the entry may be equitably confirmed in the absence of an adverse claim. 11-457

311. The 60 days of publication is complete when the notice has been inserted in nine successive issues of a weekly newspaper, and the full statutory period has elapsed; and there is no authority to permit the filing of an adverse claim after the expiration of such period. 28-224

312. In the publication of notice figures must not be changed to words and charged for as thus extended. 3-115

313. Insufficiency of publication, not the fault of applicant, waived in the absence of adverse rights. 1-575

314. Entry sent to the board of equitable adjudication where a misdescription of one of the lines of survey appeared in the published notice, the error not being the fault of the applicant or to the prejudice of the rights of third parties. 6-546

315. Where the published notice is not sufficiently explicit in the matter of description, but the posted notice is in due form, the defect may be cured by equitable action in the absence of protest or adverse claim. 11-234; 14-563

316. Will not be permitted to pass to patent, where in the surveyor's certificate and the notice of application, the name of the county in which the claim is situated is incorrectly given. 29-154, 289

317. A misstatement in the published notice of an application for a placer patent, as to the mining district in which the land is situated, is not fatal to the notice, where the land is accurately described by legal subdivisions, and otherwise identified. 26-25

318. If the published notice is not as explicit in description as the notice posted on the claim, the defect is the fault of the

register and may be cured by reference to the board of equitable adjudication.

8-457

319. An error in description (last course and distance, to inclose the tract, made to run east instead of west) which does not mislead the adverse claimant or defeat any right will not invalidate the publication.

2-707

320. An error in the published notice will not be held sufficient to require new notice, where it is of a character not to mislead, and the different forms of notice, as published and posted, when taken together show with accuracy the location and boundaries of the land.

29-558

321. Clerical errors in posted and published notice will not be regarded as materially affecting the validity of the notice, where not calculated to mislead or deceive, and no prejudice thereby is shown or alleged, and it appears that such notice, taken as a whole, meets the requirement of the law.

29-230

322. Notice of application must be posted in local office during the whole period of publication.

1-572

323. Posting for 60 days sufficient if the same period is covered by publication.

5-510

324. Notice must be posted, during the period of publication, in the local office having jurisdiction over the land; and in the absence of such posting, republication must be made in accordance with statutory requirements.

17-282

325. The fact of posting forms in part the basis of the application.

9-503

326. Copy of plat and notice of application must be posted in a conspicuous place on the claim.

7-554

327. In the notice posted on the claim the book and page of the record should be given of the location on which the official survey is made, and failure to comply with this requirement will necessitate new notice.

23-504

328. Entry can not be allowed where the applicant fails to post the plat and notice in a "conspicuous" place on the claim, and failure to comply with the statute in such particular will make new notice necessary.

21-336

329. Where due proof of posting is made, an allegation that the posted notice could

not be found on the claim does not call for republication of notice, in the absence of any prejudice shown on the part of the protestant.

20-43

330. The shaft house on a lode claim is a proper place for posting notice of application for patent.

22-624

331. Posting in open shaft house held sufficient.

1-548

332. Failure to post notice on mill-site portion of claim excused under the facts. (See 27-373.)

3-386

333. Failure to post on contiguous mill-site portion of claim excused and the entry sent to the board of equitable adjudication. (See 27-373.)

5-513

334. On application for a mill site in connection with a lode claim, the notice and plat should be posted on the mill site for the statutory period.

25-165; 27-373

335. Where two or more contiguous mill sites are embraced in a single application for patent, the posting of one copy of the notice and plat within the limits of the group is sufficient, without the necessity of posting a separate copy upon each claim.

40-313

336. Where the plat and notice were posted in the limits of the claim as located, although on ground excluded from the application, it suffices.

2-756

337. Affidavit of posting may be made by a claimant whose knowledge is derived from personal observation at various times and from reliable information.

9-503

338. Too late to raise technical objection to the affidavit of posting after action thereon and allowance of entry.

9-503

339. Occasional absence of the witness from the mine does not impair the value of his testimony as to the fact of posting.

9-538

340. Entry may be referred to the board of equitable adjudication where the posting, through inaccessibility of the claim, was made on adjacent claim.

7-477

341. Due compliance with law and regulations appearing, except in the matter of furnishing proof of posting, the entry may go to the board of equitable adjudication after new advertisement, posting, and proof thereof.

6-717

342. Proof of posting in the local office should be furnished by the register, and

in the absence thereof evidence of such posting may be submitted by the applicant.

8-457

343. Section 2325, R. S., requires that an applicant for patent shall file with his application an official plat of the claim or claims applied for, and shall post a copy of such plat, together with a notice of the application, in a conspicuous place on the land embraced in the plat, previous to the filing of the application, "and shall file an affidavit of at least two persons that such notice has been duly posted." The words "such notice" have been uniformly construed to embrace both the plat and notice referred to. *Held*, That the requirement as to the affidavit is mandatory, and where such affidavit is not filed all proceedings upon the application for patent are without authority of law. 34-583

344. The statutory requirements that the fact of posting of notice upon a mining claim shall be shown by an affidavit of at least two persons, and that such affidavit shall be verified before an officer authorized to administer oaths within the land district where the claim is situated, are mandatory; and the defect in patent proceedings due to the execution of such affidavit outside of the land district can not be cured by the subsequent filing of a properly verified affidavit. (See 40-198.)

37-155

345. Even if it be conceded that the act of June 29, 1906, amending section 558 of the Code of the District of Columbia, and declaring "that no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent or in which he may be in any way interested before any of the departments aforesaid," is applicable outside of the District of Columbia, the mere fact that an application for patent to a mining claim and the affidavit of posting of notice on the land were verified before a notary public who was one of the attorneys for the claimant in prosecuting the patent proceedings, does not render them absolutely null and void, but voidable only, and, where there is no question as to the fact of notice, they are subject to amendment; and, when amended to con-

form to the requirements of the law and regulations, entry allowed upon the voidable affidavits may be permitted to stand.

40-198

346. Compliance with local laws and regulations in the location of mining claims, in the matter of posting notices thereon, will be presumed, in the absence of any showing that such question is of material importance in the case. 26-541

347. Footnote attached to printed notice of application showing period of publication is no part of the notice.

14-180; 25-550

348. Notice of mineral application to one of the owners of a conflicting claim is notice to his coowner, in the absence of fraud.

17-558

349. An application for patent should not be allowed, where the land embraced therein is covered by a railroad selection of record, without due notice to the company.

20-485

350. Circular of September 9, 1904, relative to notice to railroad grantee of the filing of applications for mineral patent.

33-262

351. In the matter of a protest against a mineral application in which the General Land Office dismisses the protest, but in the same order requires of the mineral applicant republication, the judgment, if allowed to become final, is equally binding upon both parties, and should be so treated on a subsequent application of the mineral claimant for equitable relief.

22-318

352. An applicant for the right of mineral entry, who expressly excludes from notice of his application stated areas, is not entitled thereafter to make entry of such excluded ground without due notice of such intention.

26-198

353. Where the notice of an application for patent excepts and excludes therefrom all conflict with a specified survey, no portion of the land embraced in said survey, as it existed at the time when the posting and publication of notice commenced, should be included in the entry allowed under said application. 28-24

354. A recital of exclusion of conflict in the notice as effectually eliminates the conflict area as if the exception and ex-

clusion were in terms declared in the application itself. 34-554

355. Exclusion of conflicting areas must appear in published and posted notices. 1-543

356. An applicant for patent, who has excluded ground embraced within a prior application of his own for another claim, may amend his application and entry so as to include ground covered by the senior application, on the relinquishment of his claim thereto; but he will be required in such case to make new publication and posting, and otherwise comply with law and regulations. 28-436

357. In case of a relinquishment of part of the land covered by a mineral application, pending publication, the register should withdraw and correct the notice, and commence anew publication thereof; but failure so to do can not affect the force and validity of the relinquishment, or impair the notice, for, as to the land relinquished, the notice is mere surplusage, being limited to the application as amended by the relinquishment. 27-369

358. The provisions of the act of April 28, 1904, amending section 2327, R. S., in no wise modify or affect any requirement of the mining statutes with respect to notice of an application for patent, nor can they have any effect to cure defects or irregularities in the notice of patent proceedings had in any case. 34-682

VIII. Adverse Claim.

359. Adverse proceedings. Circular of May 9, 1882. 1-685

360. Circular of June 25, 1910, under act of June 7, 1910, with respect to extension of time for filing adverse claims in Alaska. 39-49

361. The statutory fee for filing and acting upon an adverse claim can not be required if said claim is rejected by the local office. 13-718

362. The adverse claim must be upon oath of the person or persons making it; may not be sworn to by an attorney. 2-706

363. The requirement that an adverse claim shall be upon oath is not complied with by the attempt of an officer to ad-

minister the oath over a telephone to a person not in the presence of such officer. 33-553

364. An adverse claim asserted by a corporation created under the laws of Colorado, sworn to by the president of such corporation in Louisville, Ky., is not properly verified under section 2335, R. S., or the act of April 26, 1882. 33-680

365. The oath to an adverse claim, made by the agent or attorney in fact of the adverse claimant, under the act of April 26, 1882, must be verified before an authorized officer within the land district where the adverse claim is situated, in accordance with the provisions of section 2335. 34-314

366. Where the oath to an adverse claim is made by the agent of the adverse claimant outside of the land district, although before a notary public whose jurisdiction extends throughout a county lying partly within and partly without the land district, such adverse claim is not properly verified within the meaning of said section 2335. 34-314

367. An appeal will lie from the rejection of an adverse claim. 13-718

368. It is not a valid reason for refusing to accept an adverse claim that proof of publication has not been received. 13-718

369. The failure of an agent who files an adverse claim to furnish therewith proof in corroboration of his sworn statement of authority will not defeat the right of the adverse claimant to have the controversy settled in the courts. 11-150

370. The failure of an adverse claimant who appears as transferee to furnish abstract of title will not defeat his right to be heard when he has complied with the regulations as far as possible. 15-45

371. The adverse proceedings provided for in section 2325, R. S., contemplate only suits between adverse mineral claimants, and do not have in view adjudications respecting the character of land as between agricultural and mineral claimants. 23-173

372. The adverse proceeding contemplated by the mining law is for the purpose of determining the right of possession as between conflicting claims, and does not include a suit in the courts to

settle a question as to the character of the land. 25-7

373. Sections 2325 and 2326, R. S., contemplate, as the subject of judicial determination, the disputed possessory right to ground embraced in conflicts between different mining claims only. 35-495

374. The mining laws do not provide for adverse proceedings against an applicant for mineral land, by one claiming the same, or any part thereof, under laws providing for the disposal of nonmineral lands; and a suit of such character does not warrant a stay of proceedings on an application for a mineral patent. 29-522

375. The statutory provisions relative to adverse proceedings apply only where there are adverse claims to the same unpatented ground, hence a suit instituted by a placer patentee against a lode claimant for land included in the placer patent is not an adverse proceeding within the purview of the statute, and the judgment rendered therein can not be accorded the conclusive effect which attaches to a judgment rendered in an adverse proceeding such as contemplated by the statute. 28-41

376. An adverse claim is the appropriate recourse of one claiming under a possessory title only, against a valid application for patent to land subject to appropriation under the mining laws, and the provisions of sections 2325 and 2326, R. S., with respect to that remedy, have no relation to or bearing upon the question of the effect and scope of a patent. 33-91

377. Section 2325 is a statute of repose only so far as to bar the assertion of adverse claims not filed within the period of publication, and does not relieve the Land Department from the duty of ascertaining whether the land is mineral in character, subject to disposition under the mining laws. 29-12

378. The statutory assumption declared in section 2325, that no adverse claim exists, where none is filed during the period of publication, has relation only to adverse claims which might have been made known at the local office during that time. 29-302

379. Alleged delinquent cotenants must protect their rights as adverse claimants. (See 25-495.) 1-544

380. A coclaimant must protect his rights under the form of procedure provided for an adverse claimant. (See 25-495.) 1-544; 5-93; 18-358

381. A protest based on alleged coownership is not an adverse claim that requires the institution of judicial proceedings. 25-495

382. Tunnel location should be protected by adverse suit as other mining claims. 1-584

383. The patentee of a placer claim is under no legal obligation to institute adverse proceedings against a subsequent conflicting lode claim. 25-460

384. An applicant for lode patent has no right to land embraced within the prior location and application of another, and against which said applicant filed no adverse claim. 28-321

385. Protest or adverse claim should be filed as against an application to protect rights under a prior townsite patent. 4-555

386. An adverse claim must be filed within the 60 days of publication, and in the computation of such period the first day of publication is excluded. 13-286, 718

387. An adverse claim will be recognized as filed within time if such filing is in accordance with the regulations then in force. 11-391

388. Adverse claim must be filed within the 60 days of publication required by the statute. 4-30; 16-101

389. The adverse claim must be filed within the 60 days of publication. The rule allowing it to be filed on the day of the tenth publication where the newspaper is issued weekly, is rescinded. 2-709

390. Time for filing adverse claim not computed to include period during which the local office was closed. 1-572

391. If the last day of publication falls on a legal holiday, the adverse claim may be filed on the next business day. (See 34-568.) 13-718

392. If the last day of publication comes on Sunday, an adverse claim filed on the succeeding Monday is in time. (See 34-568.) 8-430

393. An adverse claim under section 2326 is required to be filed "during the

period of publication " of notice of the application, and where the last day of such period falls on Sunday, an adverse claim filed on the following Monday can not be recognized as an adverse claim within the meaning of said section and can not have the effect to stay the patent proceedings.

34-568

394. The statutory provisions limiting the time within which an adverse claim may be filed are mandatory, and the Land Department is without authority to extend said period.

29-467

395. The local officers may properly refuse to accept and file an adverse claim tendered out of office hours on the sixtieth day of publication; but if such claim, so tendered, is accepted and filed it must be regarded as filed in time.

23-546

396. Suit must be commenced within 30 days after filing, and if not so commenced it must be held that no adverse claim exists.

2-707, 744

397. In determining whether an adverse judicial proceeding has been instituted within the statutory period, the department will not undertake to review an order of a court of competent jurisdiction recognizing the initiation of such proceedings within said period, while the suit so begun is pending within said court.

23-20; 37-484

398. Failure to commence proceedings upon an adverse claim in a court of competent jurisdiction within the period prescribed by section 2326, R. S., constitutes a waiver of the adverse claim; and such proceedings thereafter begun and prosecuted can not affect the rights of the applicant for patent.

35-551

399. Where an adverse claim is presented for filing within the period fixed by statute but is rejected by the local officers, appeal from such action does not relieve the adverse claimant from the obligation to commence judicial proceedings within the statutory period, and a failure to do so constitutes a waiver of his claim.

35-304

400. How the period for filing adverse claims may be affected by the date of posting.

5-510

401. Failure to adverse within period of publication leaves the plaintiff in the position of a protestant.

3-422

402. In the absence of an adverse claim asserted within the period of publication the department is warranted in the assumption that no such claim exists.

21-30
403. All adverse claims are held as adjudicated in the applicant's favor if not asserted within the statutory period and in the manner provided.

9-563, 572

404. In the absence of adverse claim it is assumed that the applicant is entitled to patent, and no agreement of parties can affect this statutory provision.

1-591

405. An objection to the issuance of a mineral patent, based on an assertion of prior right to a portion of the land included in the entry, will not be entertained where protestant fails to file any adverse claim during the period of publication.

30-67

406. Failure to file an adverse claim is a waiver of all right to the ground in conflict; and a judgment obtained in adverse proceedings against the subsequent application of another is of no avail as against such waiver or as against a judgment obtained by one who successfully adverse the first applicant.

28-322

407. While section 2325 contemplates patent proceedings only by those having full possessory title at the time of filing the application for patent, yet in case application is filed by only one of several cotenants, without joining the other cotenants as parties, and legal notice of the application is given, it is incumbent upon an adverse claimant to assert his claim in the manner provided by statute; otherwise, as against that patent proceeding, he will be held to have waived his claim, and the pending application will be subject to adjudication by the Land Department upon equitable principles.

37-715

408. An adverse claim filed out of time and suit based thereon but not begun within the period prescribed, do not preclude the allowance of entry; nor does the pendency of such suit bar the issuance of patent on said entry.

14-180

409. One who files an adverse claim out of time and brings suit thereon, but not in time, does not occupy the status of an "adverse claimant," but that of a "protestant" without interest.

14-180

410. Failure to adverse within required time (because of alleged failure of adverse

claimants to obtain mineral in their claim) is an admission that they had no right to the property; they can not be heard subsequently to claim either legal or equitable title to it. 2-738

411. The obligation of an adverse claimant to begin judicial proceedings within the statutory period is not suspended by favorable action on a motion to dismiss the adverse claim, and appeal therefrom. 22-274

412. A misstatement in the published notice as to the termination of the period of publication will not excuse the adverse claimant from filing his claim within the statutory period. 13-286

413. The fact that the expiration of the period of publication is erroneously stated in a footnote appended to the published notice will not excuse an adverse claimant from filing his adverse within the period fixed by the statute. 14-180; 25-550

414. An agricultural claimant who asserts no claim in himself during the period of publication is not thereafter entitled to an order for a hearing. 10-572

415. Failure of prior locator to adverse is a waiver of right. 1-591

416. Failure of the original locator to adverse an application based on a junior location authorizes the assumption that the claimant under the junior location is entitled to a patent as against the claim of the prior locator. 19-246

417. The subject matter of the controversy having been transferred to a court of competent jurisdiction, all further proceedings in the land office affecting the property in dispute are stayed, with the exception of the publication of notice and making and filing proof thereof. 2-704

418. Where suit was duly commenced, though a subsequent decision dismissing the adverse claim for invalidity has become final, no action looking to the issue of patent will be taken while the suit is pending. 2-706

419. The local office has no authority to allow an entry during the pendency of adverse judicial proceedings. 11-150

420. Judicial proceedings are not effective as against an application for patent if not based upon an adverse claim as provided by statute. (See 29-62.) 24-18

421. A suit involving possession and instituted prior to the filing of an application for patent, notice of the commencement and pendency of which is brought to the Land Department after the expiration of the period of publication, is not such a proceeding in court as is contemplated by section 2326, R. S., and pending the determination whereof the patent proceedings are required to be stayed. 33-187

422. The only judicial proceedings in which a claim may become involved, resulting in delay which would otherwise be fatal to entry, and which would protect the rights of the applicant for patent during their pendency, are those arising under the mining laws themselves, whereby the applicant is prevented from completing his patent proceedings prior to final determination of the litigation. 34-56

423. If the protest against a mineral application does not present such a claim as, contemplated by the statute, it should not be treated as an adverse; and the fact that suit thereon has been commenced in the courts will not require the Land Department to recognize the claim as an adverse within the meaning of the law. 25-495

424. A protest against a mineral application, alleging adverse ownership, filed by one who asserts no adverse claim in the manner provided by section 2326, R. S., presents no question for the consideration of the department, except in so far as the claim of ownership may operate as an inducement to accord the protestant the right to be heard on appeal. 29-230

425. A protest based on alleged coownership is not an adverse claim that requires the institution of judicial proceedings; but the Land Department may await the result of proceedings so begun before giving further consideration to the protest. 25-495

426. The department may properly direct a stay of action during the pendency of judicial proceedings, even though said proceedings are based on a protest that does not require an adverse suit under the statute, if such stay is in aid of a proper disposition of said protest by the department. 26-220

427. Where it is held in a judicial proceeding, not of the adverse character contemplated by the statute, that all the land embraced in a lode location is excepted from a placer patent, and that such excepted land, not included in the lode entry, is open to exploration, and the same is awarded to a subsequent lode claimant, as against the placer patentee, and said patentee acquiesces in such judgment, and thereafter, having due notice of proceedings by such lode claimant to secure patent, makes no objection, the patent may go in accordance with the judicial award. 28-41

428. A judgment of a court in adverse proceedings instituted by a placer claimant against a lode applicant, wherein the adverse claimant is awarded possession, forms no basis for a lode entry by such adverse claimant, where, in the adverse proceeding, said claimant rests his right solely on his alleged placer claim, and asserts that there are no known lodes or veins therein. 29-137

429. An adverse placer claim, and the judgment thereon, will not be disregarded on the ground that the land in controversy by previous decision of the department has been held to contain no placer deposits, where said adverse claim has been recognized by departmental decision, and sustained by the trial court, and the matter is pending on proceedings in error in which a supersedeas has been allowed. 29-137

430. A placer claimant who, on the strength of his placer location, prevails in an adverse suit under section 2326, R. S., against an applicant for patent to lode claims within the placer limits, may take title to the lodes under the judgment roll, if at all, only as *lodes within a placer*; and if the land embraced in the placer claim is not of patentable placer character, the lodes are not in that situation and as such available to the placer claimant. 33 660

431. If the land embraced in the placer claim be found to be nonplacer in the patentable sense, so that the placer claimant can not take the legal title thereto, the basis of his claim to the lodes disappears and no prejudice to the claim of the lode applicant can have resulted from

the judgment of the court awarding the placer claimant the right of possession of "the ground in controversy," as part of the placer, in which the lodes are. 33-660

432. An application for placer patent relative to the date of the filing of which the question of the known existence of lodes within the placer limits is to be determined is one which may result in the acquisition of title. 33-660

433. Where a placer adverse claimant, on the strength of his placer location, prevails in a suit under section 2326, against an applicant for patent to lode claims within the placer limits, and the placer location should thereafter be found by the Land Department to embrace nonplacer land, the possessory right so awarded would fail as a basis of title to the portion of the placer location in controversy and equally to the lodes therein embraced, and would fall short of that effective basic right essential to the foreclosure of any purely lode rights in the patent applicant; and the latter would have suffered no prejudice by reason of the judgment of the court. 34-401

434. Having prevailed in the adverse suit solely by virtue of his placer location, any additional rights which the successful adverse claimant might set up under subsequent lode locations by him of the ground in controversy would be wholly independent of the court's award. 34-401

435. A judicial award to the junior locator, made in adverse proceedings, of a small part of the ground in conflict, is none the less binding upon the parties and the Land Department because made in pursuance of a stipulation. 28-322

436. A judgment rendered in adverse proceedings, whereby part of the ground is awarded to the senior locator and the remainder to the junior, is none the less binding upon the parties and the department because made in pursuance of a stipulation. 28-398

437. Where a party has two applications pending at the same time, each of which embraces the ground in conflict with other locations, and such ground is awarded the applicant in adverse proceedings, he may, at his election, take the same under the senior application. 28-322

438. A suit pending on an adverse claim operates to oust the department of all jurisdiction over the matters involved therein, even though the judicial proceedings rest on a claim wherein the application for patent has been denied by the department. 22-527

439. Where coowners of an adverse claim bring separate suits in their individual names, and in different courts, a dismissal of the junior proceeding will not confer jurisdiction upon the department to proceed with the application and allow the entry. 22-343

440. Where a mineral applicant institutes adverse judicial proceedings against a subsequent applicant, whose claim in part involves the same land, there should be a stay of action until final disposition of the suit at law. 22-629

441. The departmental decision in *Little Giant Lode*, 22 L. D., 629, did not hold that the proceedings under consideration constituted an adverse suit as contemplated by section 2326, but that under the facts shown a stay of proceedings was warranted. 29-194

442. Where adverse proceedings involving a common conflict are prosecuted, that fact appears of record, and the parties are charged with notice. It is incumbent upon each adverse claimant to take such action as will determine his right, not only as against the applicant for patent, but also as against other adverse claimants. Until this is done the stay of proceedings is not relieved. 26-198

443. It is not material to the rights of an applicant under a favorable judgment in adverse proceedings, that an adverse suit is still pending between the losing party in such proceedings and a third party, where a favorable judgment against the third party for the same ground has already been secured by the applicant. 28-322

444. No action can be taken in the Land Department on an application for patent during the pendency of adverse judicial proceedings. 11-391

445. Hearing should not be had before the local office on a protest during the pendency of adverse judicial proceedings. 12-294

446. A protest will not be entertained during the pendency of adverse judicial proceedings instituted by the protestant and others; and this rule is especially applicable where the matters alleged in the protest may be made the subject of legitimate inquiry in the pending adverse proceedings. 26-348

447. In a controversy between one claiming under a townsite entry and patent, and another under a subsequent application for mineral patent, the question as to whether the land contained, at the date of the townsite entry, known mines, or was embraced in a valid mining claim or possession, must be decided by the department; a decision of that question by a court would not bind or conclude the department, or relieve it from the duty of making its own decision in the premises. 29-522

448. Judicial proceedings instituted outside of the authority of section 2326, R. S., can not affect departmental action on an application for patent. 11-8

449. Where an adverse claim is presented in proper form and the courts have properly acquired jurisdiction, and there has been no settlement or decision of the suit or waiver of the claim, the General Land Office will not consider a question which goes to the merits of the case. 2-699

450. Motion to dismiss an application will not be entertained prior to the disposition of adverse proceedings duly initiated and pending in the courts. 6-533; 10-270

451. Action on an application for reinstatement of a canceled mineral entry should be suspended, where the applicant has filed an adverse claim against the application of a relocater for the land covered by said entry, and suit on said claim is pending in a court of competent jurisdiction. 26-608

452. The relinquishment by the applicant of the land originally in conflict does not authorize the Land Department to resume jurisdiction during the pendency of judicial proceedings by an adverse claimant who has been permitted in such proceedings to amend so as to embrace a larger quantity of land than was included in the original adverse claim. 11-391

453. Where a mineral applicant during the period of publication, and prior to the filing of any adverse claim, relinquishes part of the land, such relinquishment runs to the United States, though in terms made for the benefit of another claimant, and operates to withdraw from the pending application the land so relinquished, and no rights can thereafter be secured as to such land by adverse proceedings against said application. 27-369

454. In case of a common conflict between several, a relinquishment or exclusion by the applicant for patent, in favor of one who did not adverse the application, is of no effect, as against another adverse claimant who, prior thereto, has prosecuted his adverse claim to a favorable judgment. 26-198

455. An entry allowed prior to final disposition of adverse proceedings must be canceled where such adverse claim remains undetermined. 7-83

456. Section 2326 contemplates that controversies between conflicting mining claimants, involved in adverse proceedings in the courts, shall be tried and determined, unless the adverse claim be waived, before entry is made by either party. 30-298

457. Where an adverse claimant has been allowed, through inadvertence or mistake, to institute patent proceedings embracing his adverse claim and to make entry thereof during the pendency in court of a suit involving the same, the entry will be canceled. 30-298

458. A mineral entry irregularly allowed during the pendency of adverse proceedings will not be canceled for such irregularity, where, subsequently thereto, the adverse is dismissed, leaving the applicant in the same status as though no adverse claim had been filed. 27-191

459. Entry prematurely allowed pending disposition of adverse litigation permitted to stand on withdrawal of the adverse claims. 7-336

460. If, after a mineral entry has been allowed, the entryman finds it necessary to maintain an adverse suit against a conflicting claim, it is incumbent upon the Government to take notice of the result of such action, and act accordingly. 25-262

461. Stay of proceedings warranted on allegation of adverse claim shown on plat filed. 1-538

462. The stay of proceeding resulting from adverse claim removed by waiver. 4-120, 376

463. A discrepancy between the adverse claim as filed in the local office and that upon which suit is instituted will not warrant the Land Department in the resumption of proceedings during the pendency of the suit in court. 10-194

464. Adverse claim, though informal, held sufficient where suit had been duly brought thereon. 1-603

465. If the protest shows that an adverse proceeding is pending in the courts, action should be suspended by the local office until final disposition of such proceedings, though it may have been begun before the application for patent. 8-437

466. The pendency of proceedings in the nature of an adverse suit, instituted for land excluded by the applicant for patent, does not warrant a stay of action under a subsequent application filed by said adverse claimant for the excluded ground. 29-301

467. Where a claimant makes application for a part only of his claim, and at the same time institutes adverse proceedings as to the remainder, proceedings upon such application can not be delayed in the Land Department to await the final issue of the proceedings in court. 30-488

468. The pendency of adverse proceedings, based on a tunnel location, operates as a stay of all action under an application for patent that embraces ground included in said adverse claim. 29-235

469. In a case arising on a protest, by an alleged co-owner, against an application for patent, where the matters of protest involve disputed questions under a local statute of limitations, and as to the effect of conveyances of interests in the claim applied for alleged to have been made without consideration, the proceedings upon the application will be suspended and the parties given an opportunity to litigate and settle the matter by appropriate judicial proceedings. 30-334

470. A declaration in ejectment filed in a court of competent jurisdiction by an adverse claimant, within the statutory

period, and in accordance with local statutes, is such a commencement of "proceedings" as to suspend the jurisdiction of the department under section 2326, R. S., even though summons on said declaration does not issue within said period.

22-16

471. Where suit on the adverse claim has been duly instituted, but a subsequent application by the adverse claimant embracing the same ground has been received and duly adverse by the original applicant and suit thereon commenced, the Land Department has jurisdiction to dismiss from the record the second application.

2-704

472. Where suit on the adverse claim has been duly instituted, but a subsequent application by the adverse claimant embracing the same ground has been received and duly adverse by the original applicant and suit thereon commenced, the Land Department will not dismiss the second application from the record while both or one of the suits is pending.

2-712

473. Proceedings in the form of an adverse suit, instituted by one holding under an existing mineral entry, as against a subsequent mineral application erroneously accepted and entertained by the local office, do not constitute a recognition of the validity or regularity of such application, or have the effect of divesting, waiving, or suspending rights acquired under the entry.

29-114

474. Under the act of March 3, 1881, the judgment of a court in adverse proceedings to the effect that neither party has shown title to the land, precludes subsequent favorable action by the Land Department on the claim of the applicant.

33-257

475. The final judgment of a court, in accordance with the act of March 3, 1881, in an adverse suit pursuant to section 2326, to the effect that neither party has established the right of possession of the ground in controversy, terminates the patent proceedings out of which the controversy arose; and entry can not thereafter be lawfully allowed and patent issued except upon the prosecution, by a qualified claimant, of new patent proceedings.

35-32

476. Entry should be canceled where the certificate showing nonexistence of suit was recalled.

1-539

477. Extent and nature of adverse claim may be shown by means best practicable if survey can not be made.

1-582

478. A protest filed as the basis of adverse proceedings is sufficient, if it clearly and definitely notifies the mineral applicant of the nature, boundaries, and extent of the alleged adverse right.

29-460

479. A protest filed as the basis for adverse proceedings may be properly rejected as insufficient if it fails to "show the nature, boundaries, and extent" of the adverse claim in accordance with paragraphs 83 and 84 of regulations. (See 27-358.)

26-530

480. A protest filed as the basis of adverse proceedings which definitely notifies the mineral applicant of the nature and extent of the alleged adverse right, meets the requirement of the statute as to the showing required on the part of an adverse claimant, and should be accepted for such purpose, even though it may not meet all the requirements of the mining regulations.

27-358

481. Conflicting rights set up to defeat an application can not be recognized in the absence of an alleged surface conflict.

6-318; 19-356

482. Waiver of adverse claim effective when filed in the local office without reference to pending judicial proceedings thereon.

4-117, 376

483. The withdrawal of an adverse claim is a waiver of whatever right the claimant had under the mining laws to the ground in conflict, and leaves the possessory right thereto in the applicant for patent.

29-89

484. The second applicants not having filed adverse, being misled by the error of the register in receiving their application, allowed 30 days to institute suit.

3-40

485. Where application covers several locations an adverse claimant may show abandonment of any one of such locations.

4-221

486. The junior application should be treated as an adverse claim when the record shows the existence of the senior application.

3-40

487. An adverse claimant should not, after suit commenced, and while pending, file an application for the ground adversely claimed. 2-704

488. Rights as between adverse claimants must be determined by the courts. 1-584

489. The jurisdiction assumed by the courts as between adverse claimants is recognized and continued by the mining laws. 1-584

490. Courts must determine legal rights between townsite and mineral claimants. 1-556

491. Failure to assert an alleged right in the courts on due opportunity bars its consideration when set up by an assignee who is not an "adverse claimant." 4-271

492. Failure to prosecute an adverse claim or in other manner assert a right against a known pending application is conclusive as against the existence of such right. 11-8

493. The failure of an adverse claimant to prosecute his suit in the courts with reasonable diligence amounts to a waiver of the adverse claim and removes the stay of proceedings in the department. 14-180

494. The question whether an adverse claimant has exercised reasonable diligence in prosecuting to final judgment a suit instituted under section 2326, is one for determination by the court in which the suit is pending, and not by the Land Department. 33-641

495. Failure of adverse claimant to institute suit places him in the position of a protestant. 1-584

496. If an adverse proceeding is pending in the courts when application for patent is made, the adverse claimant need not commence new action after filing protest. 8-437

497. The judgment of the court does not go beyond the right of possession. 4-314; 23-95

498. A judicial determination that an adverse claimant is not entitled to possession is conclusive upon the department, irrespective of any reasons the court may have assigned for its judgment. 23-395

499. The determination of questions with respect to possession as between adverse mineral claimants rests solely with the courts; and the manner in which

a court ascertains the facts, whether by stipulation or otherwise, upon which it renders judgment is a matter that in no degree affects the conclusive and binding force of such judgment. 29-388

500. The right to determine questions of possession in the courts necessarily involves all matters incidental thereto. 4-273

501. All questions concerning the proper location and the maintenance of a prior location by the performance of labor must be left to the courts. 2-749

502. The judgment of a court, pursuant to section 2326 goes only to "the question of the right of possession," as between the parties litigant, and it remains for the Land Department to determine all other questions touching the right to patent. 33-660

503. The general principle of the exclusive judicial cognizance of controversies involving the right of possession as between rival mineral claimants and the binding force of a court's award in such a case has in view a possessory right which is the essential basis of, and which may ultimately ripen into, the legal title obtainable from the Government under the mining laws; but it necessarily remains for the Land Department to determine in any such case the force and effect as against the United States of the possessory right so awarded by the court. 34-401

504. Where as a result of an adverse proceeding a portion of a conflict area is excluded in favor of the adverse claimant, proper amendment should be made and certified by the surveyor general upon the official plat and in the field notes of survey of the claim, made necessary by the judgment, so that the boundaries and areas of both that portion of the claim entered and that so excluded shall be definitely shown and described. 39-353

505. The question of abandonment of a mine, alleged by the relocators, is a proper one for the courts, if an adverse claim is filed. 2-699

506. The date of location by an adverse claimant and the competency of a corporation under State laws to make such location are properly matters for judicial determination. 10-194

507. The dismissal of judicial proceedings instituted on an adverse claim constitutes a waiver of said claim. 19-246

508. Dismissal of suit by adverse placer claimant held a waiver of claim to ground in conflict where the lode passed through a prior placer claim. 4 273

509. Individual rights of an applicant are not waived by his executing, as president of a company, an agreement recognizing interests of said company. 11-8

510. Proof that suit was not duly commenced must be by certificates of clerks of proper State and United States courts. 2-726

511. Adverse claimants held to reasonable diligence in protecting their interests. 1-583

512. The adverse claimant, after judgment in his favor, must accompany his application with the official plat and field notes and with a certificate to the requisite amount of labor and improvements. 2-706

513. After judgment the successful claimant must file a certified copy thereof, with the other evidence required by section 2326; if suit be dismissed, the clerk's certificate or a certified copy of the order of dismissal must be filed; in no case will a relinquishment or other proof filed in the local office be accepted in lieu of the foregoing. 2-726

514. It is not necessary for one who has prosecuted an adverse claim to a favorable judgment to make an original application for patent for the ground included in such judgment, for under section 2326 said ground can be patented on a copy of the judgment roll. 27-375

515. After A had filed an application, B made application embracing part of the ground, and also duly adversed A and commenced suit; before judgment, which was in his favor, B made mineral entry; in view of the judgment and of A's acquiescence therein, the question is between B and the Government, and the irregularity in the application and entry will be waived. 2-722

516. Separate patents may issue for such portions of claims as adverse parties may rightfully possess. 1-593

517. On termination of judicial proceedings patent may issue to the appli-

cant for such part of the claim as he may appear to rightfully possess if a vein or lode has been discovered thereon. 8-437

518. On the termination of judicial proceedings the entry should be made in conformity with the decree and not allowed in the absence of the judgment roll. 14-308

519. The applicant adversed may litigate the case, relinquish the ground in conflict, and take patent for the remainder, or dismiss his application for patent and rely on his possessory title. 2-744

520. A claimant who temporarily excludes part of his claim in conflict with an adverse agricultural claim, does not thereby absolutely waive and renounce all interest in the tract so excluded, but may thereafter assert his right thereto by way of protest against the final proof of the agricultural claimant. 22-8; 23-34

521. An applicant for mineral patent may exclude land covered by an adverse claim, and take patent for the land not in conflict, without waiving his possessory right to the remainder. 22-343

522. One entitled to mineral patent under an entry, made after due compliance with statutory procedure, is not required to file an adverse claim as against the subsequent application of another that embraces part of the land so entered. 29-160

523. Notices of application for patent which exclude stated areas "without waiver of rights," do not require the filing and prosecution of adverse claims to the areas thus excluded; and the fact that no adverse claims are filed in such a case does not warrant the inclusion of said excluded areas in the entry. 26-198

524. An adverse claim filed and prosecuted successfully against a mineral application can have no effect as to the areas expressly excluded from said application, or confer any right thereto in such adverse claimant. 26-198

525. Upon acceptance of an adverse claim by the local officers they become chargeable with the fees required by law to be paid, but the time of actual payment thereof to said officer is not necessarily material as affecting the question of the validity of the filing of said claim. 29-413

IX. Protest—Protestant.

526. A protest against a mineral application does not warrant a hearing, if the allegations and corroboration thereof rest on information and belief only. 27-40

527. A hearing may be ordered to determine whether there has been due compliance with law, though the charge is not made until after entry. 10-157

528. On sufficient showing made by protest the department may order a hearing to ascertain whether there has been due compliance with law, though the adverse location set up by protestant was not made until after allowance of the entry in question. 16-282

529. Hearing may be ordered on charges by a protestant, but in such case protestant can not set up his own claim to the land. 16-532

530. A protestant who seeks to defeat an application will not be heard to set up the rights of third parties for his benefit. 21-30

531. While the department has no jurisdiction to determine controversies as between adverse mining claimants where sufficient allegations have been made to indicate, if true, that the applicant for patent has not complied with law, or is not entitled to a patent, an investigation should be held as in agricultural cases. 1-584

532. A protestant who fails to file his protest within the statutory period will not be heard to say that he had no notice, where due notice, as required by the statute and regulations, has been given. 25-216

533. A protestant who fails to assert his alleged adverse interest in the manner provided by the statute, can not, after allowance of the entry, and in the absence of an allegation of want of notice of the application for patent, be heard in support of such claimed adverse rights. 27-396

534. A corroborated protest against a lode claim, alleging nondiscovery, warrants a hearing, though the report of the deputy mineral surveyor may show the existence of ore in "streaks and kidneys" in various parts of the claim. 17-112

535. An uncorroborated protest, involving matters subsequently made the basis

of judicial proceedings by protestant, is not entitled to further consideration by the department, as to matters in issue before the court, where by stipulation of the parties the judicial proceedings are dismissed. 29-83

536. Questions as to the fact of mineral discovery, or as to compliance with law in the matter of the statutory expenditure required as a prerequisite to the issuance of mineral patent, afford a proper basis for a hearing, on due showing made by way of protest filed after allowance of the entry. 27-396

537. A protest alleging the absence of a valid discovery on the part of the mineral applicant presents no sufficient ground for action, where prior thereto, by final judicial determination in adverse proceedings, the land embracing the claimed discovery of the applicant was awarded to him. 27-105

538. An allegation that the location is void, for the reason that it is made on land covered by the prior location of protestant, presents an issue that must be determined by adverse judicial proceedings; and, on failure of protestant to so protect his interest, the department can afford him no relief, if there has been substantial compliance with the law, in the matter of notice, on the part of applicant. 22-624

539. A charge that the discovery on which a mineral application rests is upon ground covered by a prior valid subsisting location raises an issue that must be settled in the courts, under the proper statutory adverse proceeding, and on failure to so present such charge it can not be entertained by way of protest against the issuance of patent. 27-191

540. A protestant who fails to adverse an application for a lode patent will not thereafter be heard on a charge that the claimed discovery of the lode applicant is in fact on land appropriated by the prior location of protestant, or that the labor and improvements shown by applicant should be credited to protestant. 26-573, 580

541. The failure of a claimant under a mineral location to make objection to the allowance of an agricultural entry of the

land is conclusive as to the right of such claimant to be heard. 24-488

542. In case of protest against an application the local office is authorized to order a hearing to determine the character of the land and whether there has been due compliance with law. 11-214

543. The protest of a townsite that raises an issue as to the character of the land embraced in a mineral application presents a proper subject of inquiry. 7-319

544. A protest by a mineral claimant, based upon the alleged mineral character of the land, should set forth the kind of mineral and the character and general situation of the formation claimed by protestant, as well as any other material matter upon which the respective rights of the parties may be determined. 37-401

545. Protestant not entitled to appeal. 1-584; 3-422; 5-93

546. A protestant who alleges no claim, present or prospective, that is recognized under the law, is not entitled to appeal. 8-439

547. A protestant who alleges no surface conflict is not entitled to be heard on appeal before the department. 19-356

548. An allegation on the part of a protestant that the allowance of a mineral entry as applied for will injuriously affect his extralateral rights, does not present, in the absence of any surface conflict, a question of which the department will take cognizance. 29-662

549. A protestant who claims an adverse interest is entitled to be heard on appeal where he alleges that proper action was not taken to bring him within the statutory limitation as to the period accorded for presenting an adverse claim. 8-122

550. A protest filed after the period of publication will not be considered by the department on appeal, unless it is shown that protestant has an interest in the ground, and that the law has not been complied with by applicant. 23-69

551. The issue raised is solely between the Government and the entryman, in case of a hearing on a protest against a mineral entry, in which no interest in the land is alleged or shown on the part of

protestant, prior to the application for patent. 25-24

552. A location by a protestant on land segregated from the public domain gives the locator no interest as against the prior entry or the Government that will entitle him to be heard on appeal. 12-345

553. A protestant who alleges an adverse interest, noncompliance with law, and whose application for a hearing has been denied, is entitled to be heard on appeal. 14-68; 16-532

554. A claimant who asserts an interest as against the final proof of an adverse agricultural claimant, and asks a hearing, is entitled to be heard on appeal from the denial of his petition. 22-8

555. In case of proceedings on a protest where protestants are not entitled to be heard as appellants, the department may direct the General Land Office to forward the record, without awaiting appeal from the decisions below, where such action seems necessary to the termination of vexatious litigation. 26-122

556. Parties protestant, that allege an interest, and at the hearing assume without objection the burden of proof, will not be heard to say, for the first time when the case comes before the department, that the burden of proof was wrongly placed. 26-122

557. The withdrawal of a protest will not prevent action on the matter alleged therein if it appears that applicant has not complied with the law. 6-320

558. Burden of proof is with, to overcome the legal presumption that the entry is valid and regular. 3-267; 9-538

559. On appeal from refusal of the local office to entertain a protest against a mineral application, appellant is not required to serve the applicant with notice thereof. 24-349; 26-196

X. Discovery and Expenditure.

(a) Discovery.

(b) Annual Expenditure.

(c) Expenditure as Basis for Patent.

(a) Discovery.

560. An actual discovery of mineral within the limits of a, is a prerequisite to location. 17-111, 424

561. Discovery of mineral is an essential prerequisite to initiation of title under the mining laws. 39-460

562. There can be no valid location of a lode claim until the discovery of a vein or lode within the limits of the location. 33-142

563. The discovery of mineral is a prerequisite to the location, and the discovery must be made on land open to exploration, not claimed or located by any other person. 22-362

564. There must have been a discovery of mineral within the surface boundary of the claim prior to the application; if made within the claim's limits before an adverse right attaches, though not in the discovery shaft, it is sufficient. 2-741, 749

565. To constitute a valid discovery upon a lode mining claim for which patent is sought there must be actually and physically exposed within the limits thereof a vein or lode of mineral-bearing rock in place, possessing in and of itself a present or prospective value for mining purposes. 40-271

566. The exposure of substantially worthless deposits on the surface of a lode mining claim; the finding of mere surface indications of mineral within its limits; the discovery of valuable mineral deposits outside the claim; or deductions from established geological facts relating to it; one or all of which matters may reasonably give rise to a hope or belief, however strong it may be, that a valuable mineral deposit exists within the claim, will neither suffice as a discovery thereon, nor be entitled to be accepted as the equivalent thereof. 40-271

567. It is immaterial whether discovery is made before or after location, if it is made before the rights of others intervene. 28-526

568. While discovery subsequent to location is sometimes held by the Land Department to relate back to the date of location, where there was no precedent discovery, the doctrine of relation can not be invoked to the disadvantage of intervening adverse claims nor to permit anyone to secure more land by indirect means than may be done directly. 39-460

569. Discovery is indispensable to the validity of a mining location and neces-

sarily must precede or be coincident with the perfection thereof; and when questioned, raises an issue generally to be tried out in an adverse suit before the local courts of competent jurisdiction. 38-387

570. Where, however, by a protest it is charged that no discovery, within the limits of the claim, was made at or prior to the beginning of the period of notice of an application for patent, which, if true, would disclose the absence of a seasonable and essential basis for a judgment in favor of the applicant or the adverse claimant, the Land Department will take jurisdiction to determine that question, to the end that, should the charge be sustained, the patent application will be dismissed and the applicant remitted to the prosecution of patent proceedings anew, in order that due opportunity may be given for the litigation of the controverted questions properly cognizable before the local courts in adverse proceedings. 38-387

571. There is no difference as to the character of discovery that authorizes a location or an entry. 21-442

572. A discovery must be treated as an entirety and the basis of but one location. It is not susceptible of subdivision for the purpose of two locations having a common end line that bisects the discovery shaft. 16-1

573. The fact that land is returned as mineral does not obviate the necessity of a discovery as the basis of a placer location. 22-409

574. But one discovery of mineral is required to support a placer location, whether it be of 20 acres, by one individual, or of 160 acres, or less, by an association of persons. 25-351

575. There must be a discovery on each 20 acres in case of a placer location by an association. (See 25-351.) 18-81;

22-663; 23-222

576. It having been held that a placer location of 160 acres by an association requires a discovery of mineral on each 20 acres, opportunity will be given the locators for a further showing, as, under the rulings in force at the time of location, a single discovery was considered sufficient. (See 25-351.) 19-568

577. A discovery of mineral on each 20 acres of a placer location serves to except the whole location from school indemnity selection. 24-507

578. One discovery of mineral is a sufficient basis for a placer location of 160 acres by an association, but if it is subsequently shown that any area of such claim, amounting to a legal subdivision, does not contain, or is not valuable for mineral, such land must be excluded from the entry. 27-129

579. A single discovery is sufficient to authorize the location of a placer claim, and may, in the absence of any claim or evidence to the contrary, be accepted as establishing the mineral character of the entire claim sufficiently to justify the patenting thereof, but such single discovery does not conclusively establish the mineral character of all the land included in the claim, so as to preclude further inquiry in respect thereto. 29-12

580. A single discovery of mineral sufficient to authorize the location of a placer claim does not conclusively establish the mineral character of all the land included in the claim, and the question as to the character of the land is open to investigation and determination by the Land Department at any time until patent has issued. 39-299

581. A discovery within the limits of a prior existing and valid location will not support a location made since May 10, 1872; where there has been no application for patent by the prior locators, inquiry into the question need not be made. 2-744

582. An entry can not be allowed upon a discovery of a lode within the limits of a prior patented lode claim. 20-458

583. Where the discovery on which location was based was made within a prior location, a subsequent discovery within the ground claimed, prior to application or adverse right, is sufficient and obviates the necessity of remarking the boundaries. 2-752

584. An entry of two overlapping claims located and held by the same person and resting on separate discoveries of parallel veins, may stand, notwithstanding the fact that the discovery forming the basis of the later location was made within the

limits of the earlier, where the overlap is excluded from the official survey of the earlier location; the later location being treated as an abandonment of the earlier to the extent of the overlap. 29-384

585. A charge that the discovery shaft was sunk on ground embraced within a prior valid subsisting location will not be heard, where in judicial proceedings the land including the discovery shaft has been awarded to the applicant. 27-40

586. An objection to a mineral application for the reason that the discovery shaft and improvements are upon ground specifically excluded from the published notice of application is not tenable, where in adverse judicial proceedings the ground so excluded has been awarded to the applicant. 28-321

587. Where an applicant permits a junior adverse applicant to include in his claim the discovery on which such earlier claim rests, under an agreement that the land in conflict will be deeded to the holder of said claim on securing title thereto, said action will not be held to work such a loss of the discovery on the part of the prior applicant as will defeat his entire location, it appearing that said agreement has been carried into effect, that said applicant has at all times been in possession of the ground, and that said discovery and improvements were not made the basis on which patent was secured under the junior location. 27-88

588. Where necessary to support an entry, and there is no adverse claim or showing of fraud, if the evidence is conflicting, discovery of mineral in the discovery shaft will be presumed. 2-742

589. Whether the Legislature of Colorado may, in view of the national statute, lawfully attach to the mineral laws a condition requiring a discovery in the discovery shaft: *Quære*. 2-742

590. The discovery shaft being excluded, the applicant must show the existence of mineral on the remainder of the claim. 5-703

591. If part of the land is excluded, the proof must show the discovery of mineral within the new survey and the requisite expenditure on the claim as thus defined. 9-83

592. Not necessary that discovery of mineral should be shown within the land added by amendment where such land is reported as mineral and the good faith of the entry is not questioned. 7-81

593. A lode intersected by a prior placer can not be allowed to include ground not contiguous to that containing the discovery. 16-186

594. A lode location based on discovery on one side of an intersecting mill site is not good as to the ground on the other side of said mill site, and an entry of such ground is therefore invalid. 26-675

595. Land covered by an application and subject to appropriation thereunder, but excluded therefrom when entry is made, is thereafter public land, and may be included within the subsequent application of another, and a discovery on such tract is sufficient to support the later claim. 16-233

596. Positive evidence as to the discovery of the vein or lode must be furnished, showing the place where and the time when made and the general direction of the vein or lode. 7-6

597. A discovery sufficient to warrant the location may be regarded as proven, where mineral is found, and the evidence shows that a person of ordinary prudence would be justified in the further expenditure of labor and means. 19-455

598. An award of the right of possession in adverse proceedings under section 2326, R. S., necessarily involves a finding by the court that due discovery was made by the party declared to have the right of possession, which may be accepted by the department, as against a subsequent allegation of nondiscovery on the part of another mineral claimant. 28-526

599. As between mineral claimants, where it is alleged by one that the lode claim of the other was not based on a valid discovery prior to location, it is no part of the defense to show the existence of a valuable deposit. The value of the deposit is a matter into which the Government does not inquire after discovery and location, save in controversies between mineral and agricultural claimants. 21-440

600. The disclosure of a stratum of bituminous sandstone or shale from which

a small quantity of oil seeps, not sufficient to impress the land with any value for mining purposes, does not constitute a sufficient discovery to support a valid mining location. 39-335

601. A placer location of oil lands for 160 acres, made by eight persons and subsequently transferred to a single individual, invalid because not preceded by discovery, can not be perfected by the transferee upon a subsequent discovery to the full area so located, but only as to 20 acres thereof. 39-460

602. A small seepage of oil upon the surface of a spring of water, and a slight flow of natural gas, insufficient for commercial purposes and without value, from a drilled well which failed to develop oil, are not sufficient to constitute a discovery of oil as a basis for a placer-mining location under the act of February 11, 1897. 40-602

603. A placer location of oil lands, not preceded by discovery, and upon which no work which led to the discovery of oil was being prosecuted at the date of departmental withdrawal No. 5 of September 27, 1909, does not except the land covered thereby from the force and effect of such withdrawal, regardless of the subsequent discovery of oil thereon. 40-303

604. The purpose of the proviso to section 2 of the act of June 25, 1910, was to protect *bona fide* occupants or claimants of oil or gas bearing lands, who were in diligent prosecution of work leading to the discovery of oil or gas, against any withdrawal of the land as oil, and has no bearing whatever upon the question of the measure of proof necessary to sustain a protest, charging that the lands are mineral in character, against a nonmineral selection filed prior to the withdrawal. 40-321

605. A placer-mining location upon which no discovery had been made at the date of the act of May 11, 1910, creating the Glacier National Park, was invalid and did not except the land covered thereby from the operation of that act; and a discovery after the reservation of the land as a national park would be of no avail. 40-602

(b) Annual expenditure.

606. Annual expenditure required on each located placer claim. 4-223, 374

607. Failure to make the statutory annual expenditure renders the claim subject to relocation. 7-506; 23-267

608. Annual expenditure is not required upon a mining claim after entry thereof. 26-196

609. How proof of annual expenditure should be shown. 4-221, 374

610. Preliminary showing of expenditure necessary to maintain possession required on application. 4-221, 374

611. Annual expenditure for claims held in common. 5-200

612. Several held in common kept alive by work done upon one of them. 4-221

613. Where several claims are embraced within one application the annual work required by statute may be done on one of such claims for the common benefit of the claims covered by the application. 11-8

614. Where a claimant owns adjoining claims the annual work may be done on any one of them, if designed for the improvement or development of the group. In such case, however, the burden of proof is upon the owner to show that the work done tends to the development of the property as a whole, and that such work is part of a general scheme of improvement. 23-267

615. The expense of keeping a watchman and custodian in charge of a mine that is not being worked, may be properly charged as an item of annual expenditure. 28-14

616. The proof as to expenditure should so itemize the improvements that it can be ascertained therefrom what proportion of the sum expended is included in each item. 25-25

617. Not allowed on an application wherein the land on which are situated the discovery shaft and improvements is expressly excluded and the proof shows no mineral on the claim as entered or the requisite expenditure for the benefit thereof. 8-602; 10-53

618. Failure to comply with local laws and regulations, or to do the annual assessment work, subjects a mining claim to

relocation before entry, but constitutes no ground for the cancellation of the entry, in the absence of an adverse claim legally asserted. 27-396

619. Annual assesment work is not a condition to obtaining patent, but only a condition to the continued right of possession as against adverse claimants, and failure to perform such work furnishes no reason for the cancellation of an entry, in the absence of an adverse claim legally asserted. 29-164

620. A hearing should not be ordered on questions involving annual expenditure on a mining claim, and the alleged relocation thereof by reason of failure to perform such expenditure. 29-479

621. An allegation of failure to perform the annual assessment work will not be considered on the protest of one who has no standing as an adverse claimant under the statute. 29-230

622. Failure to do the required annual assessment work can not be taken advantage of by a claimant under the agricultural land laws, but only by a mineral claimant who, after such failure and before resumption of work, relocates the land according to the mining laws. 29-359

623. Questions as to annual expenditure and as to relocations alleged to have been made by reason of failure to make such expenditure or to duly resume work, are not for determination by the land department, but by the courts. 31-69

624. The annual expenditure required by section 2324, R. S., is solely a matter between adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts. It is a matter with which the Land Department has nothing to do, and hence can make no determination with respect to it. 29-302, 401; 30-202

625. Section 2324 is a statute of forfeiture and should be strictly construed. 31-178

626. When the right to a patent has been fully acquired the equitable title in the purchaser is complete and there is no obligation on his part to make further expenditure in labor or improvements

under section 2324, and no interests can thereafter be acquired by relocation or otherwise as against him. 30-202

627. A protest alleging failure to keep up the annual expenditure under section 2324 during the pendency of proceedings upon an adverse claim, or upon a former protest, and the relocation of the claim on account thereof, does not present matters which call for investigation by the Land Department. 30-202

628. A coowner entitled under section 2324 to succeed to the interest of a delinquent coowner, on his failure after notice to contribute his proportion of the annual expenditures, does not lose such right by the sale of his own interest in the claim before the completion of proceedings begun by him under said section. 29-611

629. Section 2324 authorizes proceedings against a delinquent coowner only by "the coowners who have performed the labor or made the improvements" required. A coowner who has not made the required expenditure is not within the terms of the statute and is not in a position to take advantage of its forfeiture provisions. 31-178

630. The interest of a coowner which may be acquired under the forfeiture provision of section 2324 is the share or interest of such coowner in the purely possessory rights under the location, and not in any rights arising under an application for patent. 32-93

631. A coowner who has been omitted from an application for patent can not, by subsequent recourse to forfeiture proceedings against the applicant coowner, acquire any right in himself to make entry under the application. 32-93

632. A stockholder in a corporation which is the owner, in whole or in part, of a mining claim has in himself no title in or to the claim separate and distinct from that of the corporation, and therefore is not a coowner with the corporation or the other shareholders therein, or with other part owners of the claim, and is not qualified to take advantage of the forfeiture provisions of section 2324 of the Revised Statutes. 35-54

(c) **Expenditure as Basis for Patent.**

633. Good faith must appear in the matter of expenditure. 4-220

634. The statutory expenditure required by section 2325 contemplates \$500 worth of labor, or improvements to the same value, for development of the claim. 26-122

635. Circular of December 14, 1885, modifying the practice under the Good Return placer mine decision. 4-374

636. Consolidated application filed prior to receipt at local office of circular of June 8, 1883, may be received on proof of improvements of the value of \$500 on each lode claim. 2-726

637. A claim as amended is an entirety, and it is not necessary that the improvements should be on a particular part thereof. 7-81

638. Where part of the claim included in the application was taken by assignment after litigation with a successful adverse claimant, evidence must be furnished showing the necessary expenditure thereon. 3-149

639. In determining whether the requisite expenditure of \$500 in labor or improvements has been made upon a mining claim for which patent is asked, the proper test is whether the reasonable value of the work performed or improvements relied upon amounts to that sum. Proof of the actual amount paid or of the actual number of days spent in prosecution of such work is not conclusive. 40-486

640. Certificate as to expenditure should be filed with application or during publication. (See 25-550.) 4-17

641. An applicant must at the time of application, or within the period of publication, file a certificate of the surveyor general showing an expenditure of \$500, and if the certificate so filed does not show such expenditure, additional time to make further improvements can not be granted, but the entry allowed on such proof must be canceled. (See 25-550.) 22-252, 339

642. The statutory requirement that proof of expenditure shall be filed during the period of publication is directory only, as to the time when such proof shall be made; and proof filed after the expi-

ration of said period, showing such expenditure made in due time, may be properly considered. 25-550; 26-122

643. A certificate of the surveyor general showing expenditure of \$500 within the period of publication may be accepted, though not filed until after expiration of such period. 29-491

644. The fact that the requisite expenditure is not shown to have been made prior to expiration of the period of publication is not material, where new notice of the application is subsequently published under which the proof of expenditure is regularly furnished. 29-635

645. Failure of the proof to show the requisite work or expenditure may be made good by supplemental proof. 8-516

646. Additional proof allowed though the discovery and improvements appear to be on land excluded from the claim. 4-160

647. Labor and improvements on land excluded from claim confer no rights. 4-160

648. A location under which the land containing the improvements has been excluded will not support an entry. 9-571

649. Where part of the land is excluded, the proof must show the requisite expenditure within the claim as thus defined. 9-83

650. A judicial decision that the claimant is not entitled to any credit for work done on the claim renders it necessary that the supplementary proof should show the requisite expenditure since the date of said proceedings. (See 35-32.) 7-411

651. Application embracing a location assigned to applicant and a relocation of said location enlarging it must show \$500 expended on each location; the enlargement must not exceed 20 acres. 2-763

652. Work done on a claim with a view of developing adjoining claim also is available for both. 3-267

653. The proof should show that the improvements were made for the purpose of developing the particular claim applied for. 7-71; 13-146

654. The statutory expenditure required as a prerequisite to patent must be shown to have been made upon, or for the benefit of, the claim as presented for patent. 29-156, 315

655. An expenditure of \$500 in labor or improvements to be available as a basis for patent to a mining claim must have been made upon or for the benefit of the location for which patent is sought; and work performed upon and for the benefit of a 20-acre placer location is not available as a patent expenditure for the benefit of a maximum location of 160 acres by 8 persons embracing the 20-acre location and 140 acres of entirely new ground. 40-135

656. Improvements made prior to location are not available toward meeting the requirements of the statute relative to expenditures. 36-9

657. No part of the value of permanent and immovable improvements made long prior to location, by claimants under a previous location embracing the same ground, solely to improve and develop the prior claim, can be credited to the later claim toward meeting the requirement of the statute "that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself [the claimant] or grantors." 30-289

658. Expenditures upon a mining claim made by one who at the time has no interest in the claim and is not in privity with the owner thereof can not be accepted toward meeting the statutory requirements respecting expenditures as a basis for patent. 40-498

659. Improvements upon an abandoned location, made by the prior locator, can not be credited to a later location embracing the same ground. 30-322

660. That a part of the work required on a placer is performed prior to location and while said claim is held as agricultural land, does not call for cancellation where the full amount of work required is performed prior to entry, and good faith is apparent, and no adverse claim exists. 20-455

661. In determining the question of expenditure improvements made outside the boundaries of the claim may be considered if made to aid in the extraction of ore and not included with the improvements of another claim. 6-220

662. Work done outside the boundaries of a claim, for the purpose of facilitating the extraction of mineral therefrom, is as

available for holding the claim as though done within the boundaries of the claim itself. 17-190

663. No part of a tunnel which lies wholly within ground excluded from an application for patent to a mining claim, which does not tend to the development of any part of the claim, and which if extended along its course according to the original plan would continue in excluded ground until it passed beyond the exterior limits of the claim, can be credited to the claim toward meeting the required statutory expenditure of \$500 thereon. 30-322

664. The work done on different portions of a road constructed for the development of several claims can not be apportioned as an expenditure upon the different claims, and applied to a claim on which no portion of such road is located. 22-252

665. Work done on a road leading to a claim, but outside of the exterior lines thereof, and made for the joint benefit of several claims, can not be accepted in proof of the required expenditure. 6-111

666. No part of a wagon road, lying partly within and partly without the limits of a group of mining claims, constructed and used for the purpose of transporting machinery and supplies to, and ore from, the group, is available toward meeting the requirement of the statute respecting expenditures prerequisite to patent. 37-404

667. The cost of construction of such portions of wagon roads, used in the transportation of supplies to and ore from a mining claim or claims, as extend beyond the boundaries of the latter can not be accepted in satisfaction of the statutory requirement with respect to the expenditure in labor or improvements for patent purposes, the connection between the outlying portions of the roads and active mining operations or development being too remote to justify their acceptance. 34-556

667½. Cost of a survey preliminary to the location of a ditch for the development of a claim will not be credited on the statutory expenditure where such ditch has not been dug. 7-359

668. Work done on a ditch outside a placer claim and prior to location thereof can not be accepted in proof of the required expenditure where the ditch was

not made for the development of the claim. 7-52

669. A stamp mill, even though located upon and used exclusively in connection with the mining claim to which it is sought to accredit it toward meeting the statutory requirement of expenditure as a condition of obtaining patent, can not be accepted as an improvement within the meaning and intent of the statute. 35-493

670. A lime-kiln erected on a placer mining claim containing a deposit of limestone, for the purpose of reducing the limestone quarried therefrom to lime, can not be accepted as an improvement within the meaning of the statute requiring an expenditure in labor or improvements of the value of \$500 as a condition to obtaining patent. 37-371

671. Expenditures for drill holes upon a lode mining claim for the purpose of prospecting it and in order to secure data upon which the further development of the claim may be based are available toward meeting the statutory provision requiring an expenditure of \$500 as a basis for patent. 40-498

672. It is only with respect to the actual production of salt, by the usual processes, that a saline spring or deposit may be regarded as within the purview of the mining laws; and the installation, upon a mining claim containing saline springs, of bath houses and appurtenances and the use of the water for bathing purposes is not in any respect or feature mining, and those utilities can not be regarded as in any sense mining improvements. 35-426

673. The fact that a deputy mineral surveyor is disqualified to report upon the expenditures made on a mining claim, by reason of his interest in the claim at such time, does not operate to impeach the certificate of the surveyor general based on said report, if the facts as to such expenditures are correctly stated in said report. 26-123

674. In the case of a placer claim upon surveyed lands conforming to legal subdivisions, proof of expenditure may be made otherwise than by certificate of the surveyor general. 25-550

675. The purchaser of a lode claim is entitled to all the veins and lodes in such claim, and to the benefit of all expenditures made by his grantor; and the right to such benefit is not defeated by a subsequent amended location wherein the purchaser makes use of a discovery of his own on a junior location within the boundaries of said purchase. 21-440

676. Under section 2332, R. S., possession of a, with work thereon, for the time prescribed by the local statute of limitations for mining claims, entitles claimant to a patent, in the absence of adverse claim, even though claimant may have failed through oversight in making the requisite statutory expenditure. (See 29-401.) 21-446

677. Though the application cover several locations, proof of \$500 expended on the claim as applied for is sufficient. 4-221, 374

678. The surveyor general's certificate should show what expenditure is exclusively credited to the claim for which patent is asked, where expenditures are made for the benefit of several claims. 10-198

679. Labor and improvements are deemed to have been had upon a mining claim, or upon several claims held in common, when the labor is performed or the improvements are made to facilitate the extraction of minerals from the claim, or claims in common, though such labor and improvements may in fact be outside the limits of the claim, or claims in common, or on only one of the several claims held in common. 29-542

680. In order that labor performed or improvements made upon one of several claims held in common, or upon ground outside the limits of such claims, may be accepted in satisfaction of the statute as to all the claims so held, such claims must be contiguous, so that each claim may be benefited by the work done or improvements made. 29-542

681. Where expenditure in labor or improvements is had on one only of several contiguous claims held in common, it is incumbent upon the applicant to show that such expenditure was intended to aid in the development of all the claims, and that the labor and improvements are of

such character as to redound to the benefit of all. 29-542

682. Where the labor and improvements are not upon the claim, or upon any of several contiguous claims held in common, but outside thereof, it is incumbent upon the applicant to show that the labor and improvements were intended to aid in the development of the claim, or claims in common, and are of a character suitable for the purposes intended. 29-543

683. Labor or improvements intended for the common benefit of several non-contiguous claims can not be apportioned to the different claims in satisfaction of the required expenditure thereon, for the reason that to do so would be to credit each claim with an expenditure made in part for the benefit of other claims not associated therewith as claims held in common within the meaning of the law. 29-543

684. Where the same person or company owns several contiguous claims capable of being advantageously worked together, and adopts one general system for the purpose of developing them all, the value of the work done and improvements made pursuant to such system, whether done on only one of the claims or outside of all of them, is available toward meeting the requirement of section 2325, R. S., relative to expenditure of \$500 for each of such claims. 30-510

685. It is not necessary in order to have its due share of such work or improvements credited to each claim that such claims should all be embraced in the same proceedings for patent. If the mining laws are complied with in other respects, such claims may be applied for and entered singly or otherwise, and at different times, without in any way impairing the right to have the value of such share credited to them, respectively, under that section. 30-510

686. On a showing made of an expenditure for the common benefit of several locations, embraced in one application, the department will not undertake to determine whether such plan of development will be effective or not, if it appears that the expenditure is made in good faith, and for the purpose alleged. 26-540

687. Mining work done on one claim for the benefit of that and other adjoining claims may be credited to the adjoining claims as well as to the claim on which the work is actually done, but the fact that such work has been done, and its relation to the claim for which patent is asked, must be fully shown. 27-351

688. Under section 2325 an application for patent is not limited to a single claim, but may embrace "any land claimed and located for valuable deposits," otherwise spoken of as "the claim or claims in common;" but a fair construction of the word "claim," as used in said section in connection with the stated expenditure required as a prerequisite to patent, and as generally used in the mining laws, requires that where more than one claim is included in the application the expenditure must equal \$500 for each claim. 27-91

689. In case of an application that embraces several lode claims the proof should show an expenditure of \$500 on each claim, except where it is shown that the improvements on one of such claims is for the common benefit of all. 20-394; 21-336

690. Where an application for patent embraces several locations held in common, and is made and passed to entry prior to July 1, 1898, proof of an expenditure of \$500 on the group of claims is sufficient, under amended rule 53 of the mining regulations. 28-524; 29-7, 89

691. Where an application embraces several locations held in common, and by protests and adverse claims it is prevented from passing to entry prior to July 1, 1898, an expenditure of \$500 upon the group is sufficient, under amended rule 53 of mining regulations. 29-83, 491

692. The proviso to rule 53, with respect to expenditure in case of an application for several locations held in common, is not applicable, where the failure of the application to pass to entry before July 1, 1898, is due to applicant's delay in furnishing the surveyor general's certificate as to such expenditure. 29-495

693. The proviso to rule 53, with respect to expenditure under an application that embraces several claims held in common, and does not pass to entry prior to July 1, 1898, is not applicable, if the record fails

to show that such application was prevented from being passed to entry, prior to said date, by protests or adverse claim. 29-605

694. Paragraph 53, as amended March 14, 1898, providing that proof of the expenditure of \$500 upon a group of several locations held in common is sufficient where protests or adverse claims prevent the application for patent embracing such locations from being passed to entry prior to July 1, 1898, is not applicable where it appears that under the regulations then in force, irrespective of adverse claims or protests, no entry of the claim could have been allowed until after said date. 30-200

695. Labor or improvements to be credited toward meeting the requirements of the statute as to expenditure must actually promote or directly tend to promote the extraction of mineral from the land, or forward or facilitate the development of the claim, or be necessary for its care or the protection of the mining works thereon or pertaining thereto. 31-37

696. Claimant's quartz mill, situated on one of his claims in another group, even if constructed by him for the purpose of crushing ores from the claims embraced in this entry, could not be accepted as an improvement made for the benefit of those claims, or either of them, within the meaning and intent of the statute. 31-37

697. An aggregate expenditure in labor or improvements upon one of several contiguous claims held in common is acceptable in satisfaction of the statutory requirement only when such expenditure actually promotes, or directly tends to promote, the practically contemporaneous development of all the claims concerned; and a scheme of successive development of such claims, in the absence of an expenditure for the direct benefit of each, is not within the spirit of the privilege accorded by the statute. 32-401

698. The owner of a group of contiguous claims and of an improvement constructed for their common development and effective to that end, and of sufficient value for patent purposes as to the entire group, may, instead of embracing all the claims in one application for patent, apply for and obtain patent to a portion of such

claims, based upon their due share or interest in the common improvement; and a subsequent break in the common ownership by a sale or other disposition of one or more of the patented claims, or of any interest therein, would constitute no bar to later patent proceedings for the remaining claims of the group based upon their due share or interest in the same common improvement. (See 36-551.) 36-100

699. A common improvement or system, offered for patent purposes, although of sufficient aggregate value and of the requisite benefit to all the claims of a group, can not be accepted as it then stands in full satisfaction of the statutory requirement as to such of the claims the location of which it preceded, the law requiring that an expenditure of at least \$500 shall *succeed* the location of every claim. 36-551

700. If the requisite benefit to the group is shown, or to the extent of such of the claims as are so benefited, and the elements of contiguity and common interest in the claims concerned appear; if the improvement represents a total value sufficient for patent purposes for the number of claims so involved; if for each claim located after the partial construction of the improvement the latter has been subsequently extended so as to represent an added value of not less than \$500, each is entitled under the law to a share of the value of the common improvement in its entirety, no claim receiving more or less than another from that source, participating therein without distinction or difference, and as to each the statutory requirement is satisfied. 36-551

701. Where several contiguous mining claims are held in common and expenditures are made upon an improvement intended to aid in the common development of all the claims so held, and which is of such character as to redound to the benefit of all, such improvement is properly called a common improvement. 35-361

702. Each of a group of contiguous mining claims held in common and developed by a common improvement has an equal, undivided interest in such improvement, which is to be determined by a calculation based upon the number of claims in

the group and the value of the common improvement. 35-361

703. There is no authority in the law for an unequal assignment of credits out of the cost of an improvement made for the common benefit of a number of mining claims, or the apportionment of a physical segment of an improvement of that character to any particular claim or claims of the number, such an arbitrary adjustment of credits as the exigencies of the case may seem to require being utterly at variance with the essential idea inherent in the term, a common improvement. 35-361

704. There is no authority of law for the apportionment of an improvement made for the development of two or more mining claims held in common so as to apply arbitrary fractional portions thereof, for patent purposes, exclusively to the use of individual claims or sets of claims of the group. 36-100

705. In any patent proceeding where a part of a group of mining claims is applied for and reliance is had upon a common improvement, the Land Department should be fully advised as to the total number of claims embraced in the group, as to their ownership, and as to their relative situations, properly delineated upon an authenticated map or diagram. Such information should always be furnished in connection with the first proceeding involving an application of credit from the common improvement, and should be referred to and properly supplemented in each subsequent patent application in which a like credit is sought to be applied. 35-361

706. Improvements made upon one or more of several contiguous mining claims held in common may be accepted as applicable to the entire group, in satisfaction of the statutory requirement relative to the expenditure of \$500 upon or for the benefit of each of the claims, only where the purpose of such improvements is to facilitate the extraction of mineral from the claims, and the improvements are of such character as to redound to the benefit of all the claims in this respect; and the fact that the mineral formation covered by the claims is a continuous deposit constituting one ore mass will not justify applying the

cost of improvements on one of the claims toward meeting the requirements of the statute as to the others, unless it appear that such improvements will aid in the extraction of mineral from, or tend to promote the development of, such other claims. 34-635

707. No part of the value of work done or improvements made upon a group of contiguous claims, in pursuance of a general system alleged to have been adopted for the common development of the group and an adjoining claim, can be accredited to the adjoining claim toward meeting the requirement of section 2325 relative to the expenditure of \$500, where any of the several owners of said claim is without interest in the group upon which the improvements are located. 32-595

708. An excavation made upon one of a group of placer claims containing a deposit of marble so near the surface as to be most advantageously removed by means of quarries, and which manifestly does not tend to facilitate the extraction of the marble from the other claims of the group, or to promote their development, is not such an improvement as may be accepted in satisfaction of the statute requiring an expenditure of \$500 upon or for the benefit of each of the claims constituting the group. 32-85

709. Where a placer claim or group of claims held in common contains deposits of such character and extent that they can be most economically worked by means of a mining dredge, and the owner of such claim or group has in good faith purchased and actually placed in good working order thereon a dredge for the exclusive purpose of working such deposits, which dredge has not theretofore been used as the basis for patent for any other area, it is entitled to be regarded as a mining improvement, so far as that particular claim or group is concerned, and to have its cost accredited thereto. 38-28

710. Expenditures on a tunnel located under section 2323, R. S., may be credited toward meeting the requirements of the statute with respect to expenditures as to all existing claims in fact benefited thereby where the prerequisite conditions of contiguity and community of interest are present. 40-17

XI. Entry.

See VI HEREOF.

711. Entry will be allowed only when the register is satisfied that all proofs required by the regulations are filed and that they show a *bona fide* compliance with law and regulations. 2-726

712. Gives the entryman complete equitable title so far as third persons are concerned, which is not subject to forfeiture under section 2324, R. S., the validity of an entry depends on the facts existing when it is made, and not on the entryman's subsequent acts or omissions. 2-770, 771

713. On payment of the purchase price of a tract of mineral land and the allowance of entry therefor, the right of the applicant to receive patent is complete, and precludes the acquisition of any adverse right while said entry remains of record. 29-373

714. An entry should not be allowed of land embraced within the prior location and application of another. 15-571

715. In the absence of clear showing as to possessory right patent must be denied. 6-261

716. Continuous possession with due compliance of law, for a period equal to the time prescribed by the local statute of limitations for mining claims, entitles claimant under section 2332, R. S., to a patent, in the absence of adverse claim. (See 29-62.) 21-446; 24-18

717. A judgment rendered on stipulation between parties to an adverse proceeding is conclusive as to the right of possession, and the tract so awarded to an applicant may be properly included in his survey and entry. 29-287

718. Requisite antecedent compliance with law presumed after entry. 1-548

719. Preliminary proof for patent must show the claim valid at application. 5-25

720. Application will not be allowed if the mineral character of the land does not satisfactorily appear. 3-536; 11-563

721. An entry can not be perfected without the requisite payment on application for patent, though the proof may show compliance with the law in other respects, and the claim will be subject to relocation

subsequently if the statutory requirement as to annual expenditure is not observed.

14-43

722. Where two claims are embraced in one entry, and there is no pending contest, protest, or other adverse proceeding, against one of said claims, patent may issue therefor, on showing compliance with law, without waiting for the termination of pending litigation against the other claim.

28-451, 562

723. The affidavit required of an applicant can not be made by agent or attorney if the applicant is a resident of and at date of application is within the land district.

8-223

724. Defect in, caused by noncompliance with local regulations, cured by the formal annulment of said regulations prior to the allowance of the entry.

10-173

725. Mineral entry not invalid because at the time made the land was covered by a homestead entry where the latter was subsequently canceled.

1-565

726. The occupancy of land by townsit settlers is no bar to its entry under the mining laws if the land is mineral and belongs to the Government.

7-411

727. Entry made during the existence of another entry for the same tract is irregular, but may be allowed to stand on the cancellation of the previous entry.

11-120

728. Entry should not be allowed while the land covered thereby is embraced within a prior mineral entry of record, and involved in proceedings pending before the Land Department.

29-62

729. In conflict with a prior grant to a railroad for station purposes may pass to patent, subject to the company's right of occupancy as to the part in conflict.

14-105

730. An entry based on a location made after the withdrawal of the land for a reservoir site, under the act of October 2, 1888, confers no right; but such entry may be suspended, and if it subsequently appear that the land is not required for reservoir purposes, the entry may then pass to patent.

28-172

731. Entry of lode in conflict with prior placer patent need not be canceled, but should be suspended with view to judicial

proceedings for vacation of said patent as to the land in conflict. (See 20-204.)

14-47

732. A mineral entry canceled without notice to the entryman must be reinstated irrespective of any intervening adverse claim.

23-113

733. An entry canceled for failure to comply with supplemental requirements should not be reinstated on the ground that such action was without notice, if the entryman had actual knowledge thereof; nor should reinstatement be made, in the presence of an adverse claim, without opportunity given to show cause why the application for reinstatement should not be allowed.

26-262

734. Where application for patent is filed and the proceedings carried to entry by a mineral claimant in the names of himself and his coowner company, without authority from the latter, and the entry is subsequently canceled for defects in the patent proceedings, upon notice to the former alone, the coowner company, by claiming under the patent proceedings and asking the reinstatement of the canceled entry, thereby ratifies and confirms the assumed authority exercised by its co-claimant in its behalf, validates the notice upon which the entry was canceled, and is not in position to object that the entry was canceled upon insufficient notice.

32-228

735. Where entry is erroneously canceled the land is not subject to appropriation by a stranger to the record who had located it while the entry was subsisting.

2-769

736. Only an applicant or his assignee may make entry under section 2325, R. S., or have his name inserted in the certificate of entry; this regulation does not apply to proceedings under section 2326.

2-725

737. The final certificate will not be allowed to embrace the name of one who fails to show that he owned an interest in the claim at the date of application, or that subsequently, and prior to entry, he acquired such interest from a legal applicant.

23-112

738. Under paragraph 71 of mining regulations, transfer of an interest in a mining claim, made by the applicant for pat-

ent subsequent to the filing of the application, will not be recognized by the Land Department, but entry will be allowed and patent issued in the name of the applicant, the title conveyed by the patent in such case inuring by operation of law to the benefit of the purchaser, to the extent of the interest acquired by him, as "the transferee of such applicant." 33-127

739. Final certificate should issue in the name of the heirs of the applicant, where it is known at the date of its issuance that the applicant died prior to the submission of final proof and payment for the land. (See 39-574; 40-128.) 28-14

740. As a general rule final certificate and patent for a mining claim should issue to the applicant in whose name the patent proceedings were initiated and prosecuted; and in event of his death certificate and patent should nevertheless issue in his name, and not to his heirs. 39-574; 40-128

741. In the absence of adverse claim the entry may be suspended and new proof made where that submitted was found insufficient. 7-359, 411

742. Supplemental proof permissible after due notice to the State where the status of the tract under the school grant had not been authoritatively determined prior to the entry. 7-54

743. Cancellation of mineral entry does not affect possessory rights, or render the ground covered thereby subject to relocation. 1-526; 23-113

744. The receiver's receipt and final certificate should describe the claim by the name borne in the certificate of location and official survey. 20-58

745. Error in issuance of final certificate may be corrected. 7-415

746. A purchaser after entry, but prior to patent, takes the land subject to all infirmities of title, so far as the Government is concerned. 22-704; 26-122

747. Entry should not be canceled on report of special agent. 2-788; 6-231

748. An entry should not be canceled for failure to furnish additional proof unless the record shows affirmatively that due notice of such requirement and of the order of cancellation was given; and a transferee holding under such entry is entitled to a reinstatement, with oppor-

tunity to show the facts with respect to the entryman's compliance with law. 12-125

749. An entry allowed on an abstract showing absolute title in the applicant, and thereafter suspended on account of judicial proceedings apparently affecting said title, may pass to patent on the termination of said proceedings, and the consequent confirmation of the title in the applicant. 22-677

750. An entry allowed on insufficient showing of title is properly held for cancellation by the General Land Office; but where applicant after such decision obtains a complete chain of title, and makes a satisfactory showing thereof before the department, the entry may stand and patent issue thereon. 26-484

751. An entry made on the joint application of several parties, some of which are without interest in part of the land, may stand, where such parties subsequently acquire a complete chain of title and make due showing thereof that is satisfactory as between the applicants and the Government. 29-208

752. A tract included in a mineral application and notice, but not embraced in the entry on account of a defect in the chain of title, may be afterwards included in the entry, by way of amendment, if the defect in title is cured. 29-287

753. Lands not embraced in the application and published and posted notice and other proceedings, can not be embraced in the entry. 34-269

754. It is no objection to an entry that it embraces ground specifically excluded from the application and notice, where in adverse judicial proceedings the ground so excluded has been awarded to the applicant. 29-71

755. An applicant may eliminate any part of a location, not essential to its validity, without prejudice to his claim for the residue. 29-287, 574

756. Where there has been a severance of a mining claim, entry may be allowed and patent issued on the part of the claim within which discovery was made, and as to which all the requirements of the mining laws have been met, without regard to the remainder of the claim. 39-523

757. A mineral entry based upon an essentially defective notice is unauthorized and must be canceled; nor can that entry be validated and sustained by a republication and reposting of notice of the patent application, but entry must thereafter be made anew to afford a lawful basis for patent. 37-365

XII. Lode.

758. The form of a lode location need not necessarily be a parallelogram; the formation of the mineral deposit must govern. 3-11

759. Paragraph 41 of mining regulations relating to description of lode by applicant, construed. 38-40

760. The mining laws contemplate that the end lines of a lode claim shall have substantial existence in fact, and in length reasonably comport with the width of the claim as located. 34-470; 35-22

761. In case of a location upon a blanket lode or vein, the lode line may not be extended in zigzag form so as to make the distance between the side lines of the claim exceed the width of 600 feet allowed by law in the location of vein or lode claims. 34-470

762. There is no warrant in law for extending, arbitrarily and without any basis of fact, the vein or lode line of a location in an irregular and zigzag manner for the purpose of controlling the length or situation of the exterior lines of the location to suit the convenience of the locator. 35-22

763. The end lines of a lode location must be straight and parallel to each other, and when at right angles with the side lines may not exceed 600 feet in length. 35-22

764. A lode locator may not, in the same location, lawfully include any surface area, or acquire any incidental mining rights therein, outside of the course of, or vertical planes drawn downward through, the established end lines of his claim extended in their own direction. 35-592

765. The law grants to the locator and owner of a vein or lode the right to follow such vein or lode on its dip outside the vertical side lines of his location for the purpose of appropriating the mineral of

such vein or lode, but does not authorize him to use the subsurface of the outside ground, when owned or claimed by another, for the purpose of exploring, reaching, or developing any other veins or claims, or for any other purpose. 35-617

766. For the purposes of exploration, discovery, and purchase, the legal apex of a vein that dips out of ground disposed of under the placer or nonmineral laws, is that portion of the vein within the public lands which would constitute its actual apex if the vein had no actual existence in the ground so disposed of. 26-198

767. Claimant for alleged known lode should apply for patent though such lode is included in placer patent issued to another. 4 494

768. To exclude a lode or vein from a placer claim it must appear that a valuable deposit exists in vein or lode formation and was so known to exist prior to or at the date of the placer application. 10-156

769. Lode within placer not known at application passes with patent of placer. 1-549

770. Lode claim within placer restricted to 25 feet on each side of the lode on failure to properly protect the full extent of the claim by adverse proceedings. 1-551

771. Lode within placer limited in width only when patent is asked for such lode and the claimant has no application therefor, perfected by another, prior to date of placer application. 10-200

772. Lode claim within placer restricted to 25 feet on either side thereof. 3-388

773. The 25 feet referred to in section 2333, R. S., is to be measured from the center of the lode. 3-388

774. The lateral surface area reserved under section 2333, R. S., from the grant by a placer patent, together with a vein or lode known to exist within the boundaries of the placer claim at the date of and not included in the placer application, is limited to 25 feet on each side of the center of the vein or lode. 32-513

775. A judicial award of the right of possession to an adverse placer claimant as against a lode applicant does not preclude departmental inquiry on the allegation of the lode claimant that said placer claim, as subsequently applied for,

embraces known lodes, if such question was not in issue before the court; but if such allegation of the lode claimant is sustained on such inquiry, he will be limited to the land necessary to the use and enjoyment of the lode. 23-95

776. An outstanding placer patent issued on a record that shows the absence of a known lode within the placer claim is a bar to any subsequent application for a lode claim within said placer. 10-200

777. A townsite patent that in terms provides that "no title shall be hereby acquired to any mine * * * or to any valid mining claim or possession held under existing laws of Congress," does not divest the department of jurisdiction to subsequently issue a patent for a lode claim within the limits covered by said townsite patent, if at the date of the townsite entry such lode claim was known to exist. 25-518; 26-144

778. A patent may issue for a lode claim embraced in a prior placer patent on due showing by the lode claimant that he has acquired title to the conflicting placer ground, and that the lode was known to exist prior to the application for the placer patent. 22-713

779. The applicant is entitled to enter all that part of the ground not affected by the judgment; where the judgment is for but part of the ground adversely claimed, entry may not be made until it becomes final; judgment for all the ground adversely claimed may be treated as final judgment. 2-750

780. Under section 2336, R. S., entry may be allowed of a tract divided by a patented intersecting lode. 15-133

781. The provisions of section 2336, R. S., as to priority of title where two or more veins intersect, have no application to patented mill sites that intersect lode claims. 13-146

782. Intersected by a prior placer can not take ground not contiguous to that containing the discovery. 16-186

783. A lode claim divided into two parts by an intersecting patented mill site must be confined to that part which contains the discovery shaft and improvements. 13-146; 15-504; 26-675

784. An entry will not be allowed on a lode claim that appears of record as embracing noncontiguous tracts. 21-438

785. An application for patent and an entry under the mining laws may embrace two or more lode claims held in common only where such claims are contiguous within the meaning of the public-land laws, and claims which merely corner on one another are not so contiguous. 35-485

786. Directions given that all pending entries for lode mining claims held in common and embraced in a single patent proceeding be sustained, and entry allowed in all cases where application for patent to such claims shall have been filed prior to September 1, 1907, if the law has in all essential respects been complied with and no question of common improvements is involved, and the only defect is that one or more of the claims merely corner on the other claims embraced in each application and entry. 35-485

787. Waiver of a portion of lode claims including original discovery shaft does does affect rights of possession and development as to the remainder. 1-593

788. Judgment of a court that placer ground may be taken as a lode, or known lodes entered as placer ground, subject only to the right of the lode claimants beneath the surface, is in conflict with law and will not be followed by the department. 14-641

789. There is no authority for the issue of two patents for the same land, patent to one claimant to embrace only the surface land and to another to embrace only the veins or lodes beneath the surface; nor may vein or lode deposits be claimed, located, and patented independently of the surface ground connected with and containing or overlying them. 31-21

790. To determine whether lands containing a given mineral deposit are of the class subject to location and patent under the law applicable to vein or lode claims, resort is to be had to the language of the statute rather than to definitions of the terms "vein," "lode," and "ledge," given by geologists from a scientific viewpoint. 35-652

791. This statute is to be construed in the light of the prevailing and commonly

known use of the terms "vein" and "lode," as defined by miners—the result of practical experience in mining, so as to avoid any limitation in the application of the law which a scientific definition of the terms might impose; and as well in the light of the general purpose and policy which Congress had in view, namely, the protection of *bona fide* locators of the mineral lands and the development of the mineral resources of the country. 35-652

792. A vein or lode to be locatable and patentable under the mining laws must possess the elements of rock in place bearing one or more of the minerals specified in the statute, or some other mineral that would be embraced within the added words "other valuable deposits." 35-652

793. Minerals of the nonmetallic as well as the metallic class, wherever found in rock in place, are within the purview of the mining laws relating to veins or lodes. 35-652

794. Marble which does not bear any of the minerals named in the statute, or any other mineral substance of value, is not a deposit of the kind or character contemplated by sections 2320 and 2322, R. S., as subject to location and patent under the law applicable to vein or lode claims, but may be located and patented under the law applicable to placer claims. 35-652

795. A lode location on a bed or ledge of limestone is not authorized under the mining laws. 17-84; 23-353, 395

XIII. Placer.

796. Area of placer; expenditure. Circular of December 9, 1882. 1-694

797. Patent for placer. Circular of September 22, 1882. 1-685

798. On surveyed land must conform to legal subdivisions as nearly as reasonably practicable. 2-764; 6-227; 20-485

799. All placer claims located after May 10, 1872, must "conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys," whether upon surveyed or unsurveyed lands. 30-225; 32-363

800. The rule of approximation permitted in entries under the homestead and

other laws providing for disposal of non-mineral lands has no application to locations and entries under the mining laws. 34-9

801. The smallest legal subdivision provided for by the mining laws is 10 acres, in square form; and such laws do not contemplate that in the location and entry of placer claims rectangular tracts of 5 acres may be recognized and treated as legal subdivisions. 34-260

802. A placer claim upon unsurveyed land must be located in shape and position to conform, as nearly as practicable, to the "United States system of public-land surveys, and the rectangular subdivisions of such surveys." 32-198

803. A "gulch" placer, which can not, by reason of its environment, practicably be conformed to the system of public-land surveys, and the rectangular subdivisions thereof, may, upon sufficient and satisfactory showing, be entered if in shape and position approximating such system as nearly as the conditions will reasonably permit. 32-363

804. In all cases involving "gulch" placers, a full and explicit report, touching the situation and scope of the claim or claims and the physical or topographical conditions surrounding them, which are relied upon to bring them within the principle applicable to "gulch" placers, should be required of the deputy mineral surveyor who makes the survey, to be verified under the certificate of the surveyor general, and such other evidence should be required as may be deemed necessary to satisfactorily establish the requisite conditions. 32-401

805. The mining laws contemplate that, except where impracticable, placer locations must be made in conformity with the system of public land surveys, that is, rectangular in form and of dimensions corresponding to appropriate legal subdivisions, and with east-and-west and north-and-south boundary lines. 34-56

806. Section 2331, R. S., applies to placer locations upon both surveyed and unsurveyed lands, and the provision that such locations shall conform as nearly as practicable to the "system of public-land surveys and the rectangular subdivisions of

such surveys," contemplates that locations upon unsurveyed lands shall, as nearly as reasonably practicable, be rectangular in form, compact, and with east-and-west and north-and-south bounding lines.

37-250

807. The fact that a placer location, if made to conform as nearly as practicable to the *system* of public-land surveys and the rectangular subdivisions of such surveys, as required by section 2331, R. S., would embrace small portions of land not valuable for placer mining, constitutes no reason for failure to conform the location to such system and legal subdivisions, where, if so conformed, the land embraced in the location would be as a whole more valuable for placer mining than for agricultural purposes.

34-42

808. It is no objection to the validity of a placer location that it embraces veins or lodes as well as placer deposits.

34-42

809. The fact that a placer location, if made to conform to legal subdivisions, would embrace all or a portion of the land covered by a prior location, is not a sufficient reason for failure to conform the placer location to legal subdivisions. (See 37-250).

34-44

810. The fact that portions of other claims already entered may be embraced in a placer location by conforming the same to legal subdivisions, does not make such conformity impracticable, within the meaning of section 2331, inasmuch as under the law such entered claims may be excluded from patent proceedings involving the placer. (See 37-250.)

34-44

811. The provision of the statute requiring placer claims upon surveyed lands to conform to legal subdivisions furnishes no authority, in the location of placer claims upon unsurveyed lands, for placing the lines of such locations upon previously patented or entered lands. (See 37-250.)

35-557

812. A placer location, whether upon surveyed or unsurveyed lands, will not be required to conform to the public land surveys and the rectangular subdivisions of such surveys when such requirement would necessitate placing the lines thereof upon other prior located claims or when the claim is surrounded by prior locations.

37-250

813. Where strict conformity is impracticable, placer locations hereafter made may be regarded as within the requirements in that respect where a location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts.

37-250

814. Placer locations in Alaska may be regarded as within the requirements respecting conformity, and approved for patent, if they are reasonably compact in form, contain the proper area, and are in accordance with the rules, regulations, and customs of miners.

37-250

815. Whether a placer location conforms sufficiently to the requirements with respect to form and compactness is a question of fact for determination by the Land Department in the light of the showing made in each particular case, keeping in mind that it is the policy of the Government to have all entries, whether of agricultural or mineral lands, as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular and fantastically shaped tracts.

37-250

816. A corporation, regardless of the number of its stockholders, may lawfully locate no greater placer area under the mining laws than is allowable in the case of a single natural person, namely, 20 acres.

38-281

817. A corporation may not lawfully embrace in a single location under the placer mining laws more than 20 acres, either in its own name or through individuals acting in its interest and for its benefit.

40-401

818. A placer location for 160 acres, made by eight persons and subsequently transferred to a single individual, invalid because not preceded by discovery, can not be perfected by the transferee upon a subsequent discovery.

38-59

819. A placer mining location made by several persons for the maximum quantity of land that may lawfully be embraced in a single location by that num-

ber of persons, can not be amended to include a larger area. 38-28

820. The owner of two or more contiguous placer mining locations can not, under the guise of amending one of them, substitute therefor a single location. 38-28

821. A placer location for 20 acres can not by means of an amended or supplemental location be enlarged to cover 40 acres, as such amendment would constitute in effect a new location. 40-135

822. Examination of a placer claim and report thereon by a deputy mineral surveyor at the expense of the claimant should not be required where the claim is upon surveyed land and in conformity with legal subdivisions. 7-390

823. Plat and field notes of survey may be required in case of a claim on surveyed land when necessary to accurately designate the tract. 6-580; 26-650

824. A discovery of mineral on each 20 acres is not essential to a valid location. 28-526

825. On surveyed land it is not necessary to mark the boundaries of the claim on the ground. 22-409

826. Placer application will not be allowed if the evidence does not show as a present fact the placer character of the land. 11-441

827. The entire area that may be taken as a placer claim can not be acquired as appurtenant to placer deposits which are shown to exist only in a portion thereof. 29-12

828. Where part of the area embraced within a placer entry is shown to contain no valuable mineral deposit subject to placer location, such part will be excluded from the entry. 29-12

829. In determining the character of land embraced in a placer location, 10-acre tracts, normally in square form, are the units of investigation and determination; and if any such area is found to be non-mineral it should be eliminated from the claim. 39-299

830. In case of alleged conflict between an agricultural entry and a prior placer claim the actual extent of said claim should be shown by survey. 14-59

831. Land chiefly valuable for deposits of fire clay is subject to location and entry under the mining laws. 25-349

832. Fire clay or kaolin properly the subject of placer location. 1-565

833. A tract containing "a valuable deposit of mineral paint rock in place" is not subject to entry as a placer claim. 7-66

834. Placer claim for "brick clay" not permissible. 6-761

835. A deposit of clay suitable only for use in the manufacture of Portland cement does not render the land containing it subject to disposition under the placer mining laws. 40-621

836. Land containing petroleum is not for such reason subject to entry as a placer. 23-222

837. Placer entry of oil lands authorized by act of February 11, 1897. 24-183

838. Lands chiefly valuable on account of petroleum deposits are subject to entry under the mining laws. 25-351

839. Land chiefly valuable for salt deposits can not be taken as a placer mine. 7-549

840. Entry of lands containing borax, soda, alum, etc., in California, Nevada, Arizona, Utah, and Wyoming may be made under regulations of October 31, 1881; whether the same should apply to oil: *Quære*. 2-708

841. Water right can not be obtained under guise of placer claim. 2-774; 3-536

842. Land containing stone suitable for making lime may be entered as a placer claim. 17-82

843. Lands valuable only on account of marble deposits are subject to placer entry. 25-233

844. Deposits of slate, which do not carry deposits of any other valuable mineral, when found in quantity and quality sufficient to render the land more valuable on that account than for agricultural purposes, are subject to appropriation under the placer mining laws. 40-7

845. Land chiefly valuable for building stone is subject to location and occupation under the mining laws. 27-680

846. Land containing sandstone of superior quality for building and ornamental

purposes and valuable only as a stone quarry may be entered as a placer claim. 16-508

847. A placer location of land for building stone that fails because unwarranted under the law when made can not be validated by a subsequent discovery of some other material that is subject to entry under the placer law. 17-550

848. Placer location made prior to act of August 4, 1892, of land valuable for building stone is unauthorized and will not defeat a subsequent settlement claim initiated prior to the act. 16-122; 17-120

849. Land embraced in a placer entry of a tract chiefly valuable for ordinary building stone, allowed at a time when such entries were recognized under departmental rulings, is by such sale exempted from the subsequent grant of school lands to the State, and the entry therefor may be carried to patent. 21-327

850. Land reserved for the benefit of public schools or donated to any State is not subject to placer entry (building stone) under the act of August 4, 1892. 16-119

851. Stone useful only for general building purposes does not render the land subject to mineral entry. 12-1

852. The act of August 4, 1892, authorizes placer entry of land chiefly valuable for building stone. 15-256, 360

853. Prior to the act of August 4, 1892, there was no authority to locate and purchase lands chiefly valuable for building stone under the placer mining laws. (See 26-373.) 23-329, 516; 24-403

854. In the exercise of the right to make placer entry of building stone conferred by section 1, act of August 4, 1892, a discovery preceding the entry is necessary, and no right attaches in favor of the entryman until he makes application to enter. 23-322

855. Under section 1, act of August 4, 1892, no rights are secured prior to application, and if at such time the lands are not subject to entry the claim must be rejected. 23-329

856. As between a placer applicant for stone land and a purchaser under the timber and stone act, priority of assertion of a legal claim determines the rights of the parties. 17-82

857. Land that contains a valuable deposit of stone useful for special purposes may be entered as a placer claim. 15-370

858. A vein or lode known to exist at date of placer application and not included therein must be excluded from the entry. 9-26

859. A placer applicant will not be allowed to amend his application to embrace veins or lodes discovered by others after the location of the placer claim, but prior to the application therefor, and not included in the application as originally submitted. 23-95

860. All known lodes at date of placer application are excepted from patent issued thereon, together with 25 feet on each side of said lode. 1-577

861. The lateral surface area reserved under section 2333, R. S., from the grant by a placer patent, together with a vein or lode known to exist within the boundaries of the placer claim at the date of and not included in the placer application, is limited to 25 feet on each side of the center of the vein or lode. 32-513

862. If the record shows a lode claim within a placer not owned by the placer applicant, said lode in its full extent should be excluded from the placer patent. 10-200

863. After the issuance of a placer patent the department can not assume that a known lode existed within the limits of said placer at the date of the application therefor merely because a conflicting lode location antedates the location of the placer. 22-317

864. Patent for a placer passes title to all lodes or veins contained therein if they are not known to exist at the date application is made. 14-654

865. A placer patent for land including a known lode not specifically excepted conveys title to all of said land and terminates the jurisdiction of the department over the same. (See 20-204.) 10-200; 14-47

866. When it is duly ascertained that a lode, alleged to have been known to exist within the boundaries of a placer claim at the date of application for patent therefor, was not known to so exist, it must be held that title to such lode passed under the

patent, and that the jurisdiction of the Land Department was thereby terminated.

27-661

867. A placer entry based on an application that does not disclose the existence of any known lode within the limits of the placer, or assert a possessory right to any such lode, and allowed without adverse action on the part of lode claimants, should pass to patent so far as the rights of such claimants are concerned; but the patent so issued will not prevent subsequent departmental inquiry to determine whether a known lode existed within said placer at date of application, or the issuance of patent therefor if so found to exist.

27-676

868. In the case of a placer entry allowed on a sufficient showing as to the character of the land and the development of the claim, the department should not, after the lapse of many years, permit the sufficiency of such proof to be questioned by one who had no interest in the land at the time the entry was made.

28-526

869. A lode or vein within a placer, and known to exist at date of the placer entry, is excepted from the operation of the placer patent, and a lode patent may thereafter issue for the excepted lode or vein, on due proof of compliance with law.

20-204; 21-125

870. Where a patented placer is in conflict with a lode claim and judicial proceedings for the vacation of the patent as to the land in conflict are warranted by the facts, the patentee may surrender title of such land to the Government and so vest the department with jurisdiction to again dispose of said land.

13-715

871. Where the record shows no known lode within a placer claim and patent issues for the latter, a subsequent application for a lode claim within said placer should not be allowed while the placer patent is outstanding.

12-683; 17-280

872. A lode entry irregularly allowed for land included within the prior placer patent of another may be suspended and opportunity given for a hearing on the allegation that said lode was known to exist prior to the placer entry and patent.

12-683

873. The formal location of a lode claim is not necessary to exclude the lode from a placer patent.

9-26

874. Hearing may be ordered to ascertain whether a vein or lode was known to exist at the date of placer application.

9-29

875. A lode claimant for land within a patented placer has the burden of proof upon him to show that there was a vein within the placer, known to exist at the time of the placer application, and actual knowledge thereof must be brought home to the placer applicant.

25-460; 26-622

876. Whether all the land embraced in a lode location within a patented, such location having been after the placer location but before the placer application, is excepted from the placer patent, or only the known lode or vein and 25 feet on each side thereof subsequently entered by the lode claimant: *Quære*.

28-41

877. The fact that lode claims have been located on a tract of land, and subsequently abandoned, can not affect the good faith of a placer applicant for the same land.

25-24

878. The validity and extent of a placer patent in conflict with an alleged known lode, are questions for judicial determination.

10-200

879. Placer entry for the purpose of securing title to lodes and veins known to exist is in violation of law and must be canceled.

14-685

880. A protest, by a lode claimant, against a placer entry, should not be entertained on questions involving the placer character of the ground and the entryman's compliance with law, where the entry was regularly allowed, has been sustained in the courts, and it is not asserted that the existence of any veins or lodes claimed by the protestants was known at the time of the placer application, and the location under which the protestant claims was not made until many years after the allowance of the entry.

29-465

XIV. Mill Site.

881. Mill sites provided for and recognized by section 2337, R. S.

1-557

882. Mill-site location made the same as mineral claim. 1-557

883. A mill-site entry, allowed without publication of notice of application, may be properly regarded as a nullity, in the disposition of a protest subsequently filed alleging the mineral character of the land covered by said entry. 26-66

884. On application for a, in connection with a lode claim, the notice and plat should be posted on the mill site for the statutory period. 25-165; 27-373

885. Where two or more contiguous mill sites are embraced in a single application for patent, the posting of one copy of the notice and plat within the limits of the group is sufficient, without the necessity of posting a separate copy upon each claim. 40-313

886. Nonmineral character of land claimed as a mill site must be shown. 8-195

887. The statute permits only "non-mineral land, *not contiguous* to the vein or lode," to be appropriated for mill-site purposes. (Overruled, 37-674.) 32-128

888. The provision of section 2337 that: "Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes," construed. *Held*: The words "vein or lode," in said section, are not used in the restricted sense of indicating a body of mineral, or mineral-bearing rock, in place, only, but are used in the larger sense of designating a located vein or lode *claim*, and that only nonmineral land not contiguous to a vein or lode *claim* may be appropriated for mill-site purposes. (Overruled, 37-674.) 34-320

889. Direction given that all applications for mill-site patents which may be made and carried to entry before July 1, 1906, or which may, by protest or otherwise, without the fault of the applicant, be prevented from being carried to entry before that date, where the locations of the claims were made and perfected under

the law in all other respects prior to January 1, 1904, shall be adjudicated, in respect to the matter of contiguity of the mill-site claims to vein or lode claims, under the practice which prevailed in the General Land Office prior to the departmental ruling in the case of Alaska Copper Co. (Overruled, 37-674.) 34-320

890. The provision of section 2337 whereunder only "nonmineral land, not contiguous to the vein or lode," may be acquired for mining or milling purposes in connection with a lode mining claim, is intended to prevent the appropriation, within the mill-site area, of a further segment of the actual mineral vein or lode upon which the mining claim itself is predicated; and a mill site not contiguous to the vein or lode, embracing only nonmineral land, is not objectionable merely because in contact with a side line of the lode claim. 37-674

891. It is only nonmineral land that can be appropriated as a mill site; and an application therefor must be rejected where the land is embraced within a prior railroad grant that passes title to lands of such character. 18-105

892. A qualified corporation may obtain title to a mill site. 10-194

893. There is no provision of law by which a mill site can be acquired as additional to or in connection with an existing mill site. 12-75

894. A mill site may be legally located prior to application for patent on the mining claim connected therewith. 15-499

895. Under the first class of mill sites there must be a lode or vein shown in connection therewith. 1-557

896. Under the first clause of section 2337, the owner of a patented lode may by an independent application secure a mill site, if good faith is manifest, the improvements sufficient, and no adverse claim exists. 22-496

897. Quartz mills and reduction works the only improvements on which a mill-site entry may be made under the last clause of section 2337. 9-460; 12-75

898. The first clause of section 2337 contemplates the allowance of a mill site only where the land is used or occupied for mining or milling purposes at the time application is made. 14-544; 34-325

899. The right to patent for a mill site, under the second clause of section 2337, depends upon the presence on the land applied for of a quartz mill or reduction works. 29-143

900. Land can not be taken as a mill site if not used or occupied for mining or milling purposes. 5-190;

7-415; 8-195; 9-201

901. Where a mill site is claimed in connection with a mine the land must be nonmineral, noncontiguous to the lode, and used or occupied by the owner of the lode for mining or milling purposes. 13-175

902. A mill site can not be included within an application for a lode unless such site is used for mining or milling purposes in connection with said lode. 10-196

903. The statute requires that a mill site be used or occupied by the proprietor of the vein or lode for *mining* or *milling* purposes; and some step in or directly connected with the process of mining or some feature of milling must be performed upon, or some recognized agency of operative mining or milling must occupy, the mill site at the time patent is applied for to come within the purview of the statute. 32-128

904. Land not improved or occupied for mining or milling purposes may not be appropriated as a mill site for the purpose of securing the use of the water thereon. 6-706; 12-624

905. Application for a mill site will not be allowed where the improvements are located on the line between two mill sites without either location possessing the requisite improvements independently of the other. 14-11

906. The building of a tram road or the grading of the roadbed therefor is not such a use or improvement of the land as warrants the allowance of a mill site. 14-11

907. Section 2337 does not authorize the entry of a mill site when the land is intended to be used in common with other mill sites taken in connection with corresponding lode claims. 12-624

908. Section 2337 does not contemplate the location of a separate mill site for each of a group of contiguous lode claims

held and worked under a common ownership. 32-128

909. Section 2337 does not contemplate that patent may be obtained for a separate mill site for each of a group of contiguous lode claims held and worked under a common ownership, and where more than one mill site is applied for in connection with a group of lode claims a sufficient and satisfactory reason therefor must be shown. 34-325

910. Land not used or occupied for mining or milling purposes can not be taken under section 2337 for the purpose of securing the timber thereon. 7-557

911. The appropriation and use of water on land claimed as a mill site is not the use and occupation of the land that justifies a mill-site entry. 9-201

912. The erection and maintenance in good faith of dwelling houses for the occupancy of workmen employed for purposes in connection with a mill is such an occupancy as will authorize the allowance of a mill site. (See 32-128.) 14-173

913. The use and improvement of land for the maintenance of a water supply necessary to the operation of a mine is such a use as will authorize a mill-site entry where the land is also required for the location of reduction works. 13-175

914. The use and occupancy of land for the maintenance of pumping works necessary to the operation of a lode mine is such a use as will authorize entry of the land as a mill site. 11-338

915. Both a water-right and mill-site claim may be located on the same tract of land. 5-190

916. Survey of a mill site need not be connected with a mineral monument or corner of the public surveys if connection is shown with the lode claimed in conjunction therewith. 8-195

917. If the applicant for a mill site is the owner of a lode and the mill site is located in connection therewith, patent can issue without a showing of \$500 expenditure on the mill site. 8-195

918. Mill-site claim must be protected by adverse proceedings in case of conflicting application. 1-555

919. Sections 2325 and 2326 do not require adverse proceedings in court by a millsite claimant in order to protect his

rights as against an applicant for patent to a mining claim; but by protest in the Land Department he can litigate all material matters relating to the ownership and validity of his claim as against the mineral applicant. 36-144

920. Location on nonmineral land not contiguous to lode protected from subsequent townsite appropriation. 4-212

921. In an application and entry for lode, may embrace one or more pieces of ground within the limits of 5 acres. 2-755

922. Mill-site location not made for the use or occupancy of the applicant, but for the benefit of another, can not be passed to patent. 11-561

923. The rights and equities growing out of the location of a mill site, and the erection of a mill thereon, exclude the land from appropriation by another, though the claim for the mill site may require amendment. 16-181

924. In Alaska, the boundary lines of a mill-site location can not lawfully be laid within 60 feet of the shore line of navigable streams, inlets, gulfs, bays, or the sea. 32-128

MINNESOTA.

See MINERAL LAND, 165; STATES AND TERRITORIES, 111-114; SWAMP LAND, 20-24, 195, 201-231, 246, 295.

MINOR.

See HOMESTEAD, 212-213, 246-259, X, g; NATURALIZATION; PATENT, 20-22; PRE-EMPTION, 119-121; RELINQUISHMENT, 44.

MISDESCRIPTION.

See EQUITY, 4; FINAL PROOF, 83, 100-103; MINING CLAIM, 49-50, VII; PATENT, II, III.

MISSION CLAIM.

See ALASKAN LANDS, 6, 11; INDIAN LANDS, 22-26.

1. A religious society took, under act of August 14, 1848, only the land then actually occupied as a mission, and which was with reasonable clearness set forth

by specific boundaries, together with all the improvements thereon, the amount in no case to exceed 640 acres. 2-452

2. Where a church building was erected without a surrounding inclosure the occupancy was limited to land covered by the building. 2-452

3. Instructions of December 21, 1892, relative to, in Alaska. 15-586

4. Under act of March 2, 1853, providing for confirmation of, the Roman Catholic Church is a proper beneficiary as a religious society. 19-196

5. The confirmation made by the act of 1853 is limited to the land actually used and occupied in the maintenance of the mission at the date of the act. 19-196

6. The confirmation of title under the act of March 2, 1853, is determined, as to acreage, by the actual occupancy of lands necessary to the proper maintenance of the mission. 22-365

7. The confirmation of title under the act of March 2, 1853, is limited to the lands actually used and occupied in the maintenance of the mission at the date of the act; but in determining the extent of such occupancy the apparent necessities of the mission at said date may be considered, in the absence of positive evidence as to the actual boundaries of the land so used and occupied. 25-317

MISSISSIPPI.

See MINERAL LAND, 6; SCHOOL LAND, 81; STATES AND TERRITORIES, 115-119; SWAMP LAND, 137.

MISSOURI.

See MINERAL LAND, 164; PRIVATE CLAIM, X; SCHOOL LAND, 97, 137; SWAMP LAND, 91.

MISSOURI HOME GUARD.

See CONFIRMATION, 81-82; HOMESTEAD, 568-569, 618, 649-650.

MONTANA.

See SCHOOL LAND, 20, 53-55, 310; STATES AND TERRITORIES, 13-14, 120-127.

MORTGAGE.

See ALIENATION, 42, 88.

MORTGAGEE.

See ALIENATION, 19-27; CONFIRMATION; PRACTICE, IX, d; WORDS AND PHRASES CONSTRUED, 60.

NATIONAL FORESTS.

See RESERVATION, IV.

NATIONAL PARKS.

See PARKS AND CEMETERIES.

NATURALIZATION.

See ALIEN; CITIZENSHIP.

1. Rights of citizenship acquired through taking the requisite oath, not through the certificate of admission. 4-111

2. Of the father during the minority of the son inures to the benefit of the latter and makes him a citizen. 9-297; 11-578; 16-102

3. Through the father's act during the son's minority requires the latter's residence at such time to be within the United States. 1-93

4. Of the father inures to the benefit of the minor under section 2172, R. S. 10-445

5. Declaration of deceased husband or father is the declaration of the widow or children; the citizenship of the husband or father is the citizenship of the wife or children. 2-611

6. A married woman, an alien by birth, whose husband has declared his intention to become a citizen, occupies the status of one who has filed his declaration of intention. 18-523

7. Declaration by the father during the minority of the son does not confer citizenship upon the son. 4-116; 12-637

8. A declaration of intention by the entryman, who dies before being fully naturalized, is equivalent to a declaration by his widow or minor children. 2-195

9. A declaration of intention filed by the father inures, if he dies prior to be-

coming a citizen, to the benefit of his minor son, who may avail himself thereof by taking the final oaths. 8-60, 289

10. The minor child of an alien who has declared his intention to become a citizen but does not complete his naturalization before the child attains his majority, occupies the status of a person who has filed his declaration of intention to become a citizen. 15-579; 19-507; 26-301; 29-497

11. A declaration of intention to become a citizen filed before a clerk of a court in 1868 (prior to the revision of the United States Statutes) is valid. 26-252

12. Circular of May 13, 1904, under act of April 23, 1904, relating to void declarations of intention. 32-619

13. Circular of November 6, 1906, under act of June 29, 1906, relating to declarations of intention and certificates of naturalization. 35-299

14. Circular of January 10, 1907, amending circular of November 6, 1906. 35-369

15. Section 30, act of June 29, 1906, provides for the naturalization of native Filipinos, owing permanent allegiance to the United States, who are residents of one of the States or Territories of the United States. 37-86

16. Such persons must make or must have made since the act of June 29, 1906, the declaration, required by section 30 of that act, of his intention to become a citizen, at least two years before his application for naturalization, and must have resided five years within one of the insular possessions of the United States. 37-86

17. Instructions of July 11, 1908, relative to declarations of intention by Japanese. 37-18

18. Rights acquired by declaration of intention to become a citizen may be lost by abandonment of such intention. 29-627

19. An honorable discharge from the United States Army is equivalent to a declaration of intention. 2-195

20. An alien over 21 honorably discharged from the United States Army occupies the status of one who has declared his intention to become a citizen. 16-352

21. May be shown by copies of original papers where final proof is made before an officer of a court of record. 4-210

22. An alien immigrating during his minority and remaining until after his majority must file a declaration under section 2165, R. S., or comply with the requirements of section 2167, before being qualified for entry. 2-195

23. Residence of an alien in this country the last three years of his minority qualifies him in the matter of citizenship, as a settler, without previous filing of declaration of intention to become a citizen. 17-579; 26-300

24. The statement of a settler as to the time when he filed his declaration of intention to become a citizen accepted in the absence of record evidence. 8-520

25. A declaration of intention to become a citizen is not invalid because made before a deputy clerk of a court of record, if such deputy was acting for and in the name of the clerk of said court. 25-420

26. Circular of August 11, 1906, under section 39, act of March 3, 1903, relative to certificates of naturalization. 35-116

27. Certification of, should be received only when made under the hand and seal of the clerk of the court in which the record appears, unless such record is lost or destroyed, when upon proof of that fact secondary evidence may be received. 10-625

28. County courts of Colorado are authorized to admit an alien to citizenship. 4-107, 342

29. In the matter of, in Ohio the probate court may be presumed to have a clerk. 1-83

30. Record of court without clerk not received as evidence of. 1-61

31. General statutes of, are not applicable to Indians. 1-491

32. Of a Winnebago Indian under section 10, act of July 15, 1870, does not make his children citizens of the United States. 16-324

33. Mexicans residing in California at the time of its cession, and remaining therein, become citizens of the United States under the eighth article of the treaty of cession, if they did not within one year declare their intention of retaining Mexican citizenship. 19-270

34. Relates back, in the absence of adverse claim, to the date of settlement. 4-565; 7-229; 10-475; 25-420

35. If the record relied upon to show, fails to disclose a specific judgment of the court admitting the applicant to citizenship, but does show that the requisite oath was administered, the proof may be accepted as satisfactory. 16-102

36. On proof of naturalization the presumption is raised that every prerequisite to the judgment of the court was duly shown, and that the declaration of intention was filed at least two years prior thereto. 6-756

37. Evidence as to filing declaration of intention furnished with homestead proof may be accepted in subsequent preemption proof. 8-233

38. A slight difference in the spelling of the name as shown in the declaration of intention to become a citizen, and the final papers, will not be held sufficient to defeat a claim of, on behalf of a homesteader, where it appears that he is the identical person referred to in each instance. 26-191

NEBRASKA.

See SCHOOL LAND, 98-99, 162; STATES AND TERRITORIES, 128-131.

NEVADA.

See SCHOOL LAND, 24; STATES AND TERRITORIES, 132.

NEW MADRID.

See SCRIP, 55.

NEW MEXICO.

See DONATION, I; PRIVATE CLAIM, X; SCHOOL LAND, 87, 246-247; STATES AND TERRITORIES, 133-138.

NOTARY PUBLIC.

See ATTORNEY, 63-66, 75; FINAL PROOF, 203-204; MINING CLAIM, 31-33, 154-156.

1. Circular of April 29, 1907, under act of June 29, 1906, relative to notaries public acting as attorneys or agents. 35-546

2. Attestation of, when authorized, imports the same verity as the attestation of a clerk of a court of record. 5-626

3. Certificate showing official character of, should be made by the clerk of the court where the appointment is recorded, or the officer in charge of the records containing such appointment. 5-626

4. A notary public whose jurisdiction extends throughout a county lying partly within and partly without a land district, is an "officer authorized to administer oaths within the land district," within the meaning of section 2335, R. S. (See 34-314.) 33-238

NOTICE.

See FINAL PROOF, II; MINING CLAIM, VII; PRACTICE, IX; TIMBER AND STONE, III.

OBITER DICTA.

1. A ruling by the department on a question not involved in the case, will be treated as *dictum* and not conclusive. 8-188; 10-186

2. Where the decision was that "no subsequent amendment, except for error or mistake, can operate to defeat a right previously initiated," and the case raised no question of error or mistake, it is *obiter dictum*. 2-578

3. Department not bound by expression of opinion in a matter not needful to determination of the question actually involved. 11 244

OCCUPANCY.

See OKLAHOMA LANDS, 94-95; POSSESSION; RAILROAD GRANT, 484, 539-547, 715-798; RESERVATION, 462-475; SETTLEMENT.

OCCUPANT.

See OKLAHOMA LANDS, 155-165; STATES AND TERRITORIES, 118; WORDS AND PHRASES CONSTRUED, 63-64.

OFFERING.

See MINERAL LAND, II; PRIVATE ENTRY; PUBLIC SALE.

1. Circular of June 10, 1898, under act of May 18, 1898, abolishing the distinction between offered and unoffered lands. 27-67

2. Circular of June 10, 1898, as to lands in Missouri. 27-67

3. Whether the lands have been included within, should appear of record in every case transmitted to the department on appeal. 10-684

4. "Offered" lands certified to a State under a railroad grant and certified back to the Government by the State are taken by the Government free of the offered condition that existed at the time of their certification to the State. 6-451

5. Withdrawal of "offered" lands abrogates the offering and brings them within the category of "unoffered" lands. 23-412

6. Withdrawal of "offered" land in aid of a railroad grant abrogates the offering, and on revocation of the withdrawal the lands are restored to the public domain free of their previous offered condition. 6-451; 19-513

7. Land once "offered" and subsequently enhanced in price and not afterwards reoffered, is not "offered" land. 17-200

8. The status of public land as "offered" or "unoffered" is determined by whether or not it has been offered at public auction, at the price fixed by existing law. 17-332

9. The act of March 2, 1889, withdrawing all public lands (except in Missouri) from private entry, did not repeal the distinction between offered and unoffered lands made in the preemption law. 19-478

10. A proclamation that the "public lands" in a specified township will be offered for public sale does not include lands at such time embraced in an unanceled donation notification. 28-345

11. Whatever presumption may arise that a particular tract of land was offered at public sale, from the fact that it lies within a township directed by proclamation to be offered and that no reason is apparent or shown by the record why it should not have been so offered along with the other lands in the township, is overcome by the fact that the tract does not appear in the list of lands returned as actually offered under the proclamation. 37-428

12. Land once offered and subsequently segregated from the public domain by en-

try, selection, withdrawal, etc., *prior* to the act of March 2, 1889, thereby lost its status as offered land, and until reoffered is not subject to private entry; but the character of offered land at the date of the act of March 2, 1889, and *thereafter* segregated, is not altered nor on that account taken out of the class of land subject to private entry or military bounty land warrant location. 37-65

OFFICERS.

See LAND DEPARTMENT.

1. Are presumed to discharge their duties properly. 1-223; 5-514

2. Ministerial powers must be exercised within the limitation of the statute. 4-155

3. Where an individual in the prosecution of a right does everything which the law requires him to do and fails to attain his right by the misconduct or neglect of a public officer, the law will protect him. 2-166

4. Rights of parties not impaired through negligence of. 2-849;
3-42; 4-466, 515; 5-233, 646;
6-147; 9-18, 32, 78, 102; 10-210,
415, 421, 673; 11-191; 20-535

5. No rights in a valid contest will be lost through neglect of the local officers to perform their duties correctly. 3-42, 190, 281, 569

6. Applicants for public lands lose no rights by mistakes and laches of officers of the Land Department; but persons claiming the benefit of this rule must show that they have an inchoate right and that they have not been so dilatory in assertion of it as to give rival *bona fide* applicants a superior right. 34-380

7. Failure or refusal of the local officers to promptly discharge a duty will not defeat a right. 11-218, 356

8. Failure of local, to make due record will not jeopardize the claimant's right. 1-81

9. Failure of, to properly note of record an action will not defeat rights based thereon. 15-21, 31, 367

10. Failure of, to properly report an entry does not defeat rights thereunder. 14-349

11. Failure of local, to properly note of record an entry can not defeat the right of the claimant. 16-183

12. Failure of local officers to enter of record an order directing the location of a warrant on a specific tract will not defeat the location. 16-296

13. Failure of the local officers to properly note an entry on the record and issue certificate will not affect the rights of the entryman. 3-172

14. To cure a defect in official proceedings may, after term of office has expired, attach signature to papers executed while holding office. 17-96

15. Action taken under the advice of, should be without prejudice unless, required by the absolute demands of the law. 1-151, 459

16. No loss should be sustained by the claimant through misinformation furnished by the officers of the Government or its records. 3-68

17. Failure of contestant (timber-culture) to file motion for reconsideration for five months after the limitation, by reason of the neglect of the local officers to complete the record, does not prejudice his rights though an adverse claim has intervened. 2-246

18. Where one intended to include a contiguous lot in his application (homestead) and did not because informed by the local officers that a preemption contest barred it, his rights are not prejudiced; amendment allowed in absence of adverse right. 2-36

19. Where contest was brought and tried and contestant went on the land and improved it, but no decision was made for five years because of loss of the papers, his rights are not prejudiced; on parol evidence of the facts originally proved, in the absence of a record of them, a subsequent contest is dismissed and his entry is allowed. 2-299

20. Failure of local officers to give notice of a preferred right of entry does not prejudice the contestant. 2-323

21. Failure to make final proof occasioned by the misleading advice of district officers not allowed to defeat the claim. 3-257

22. The practice of the officers of the Land Department does not impair the real and just rights of claimants. 2-849

23. Erroneous advice of local, will not operate to confer a right denied by law. 13-734

24. A statutory right can not be enlarged through erroneous action of the local officers. 3-46, 254; 4-188, 424; 5-351, 403; 6-237

25. The laches or default of an entryman can not be excused because of erroneous advice by local officers. 35-252

26. The acts of an officer *de facto* are valid in so far as they affect the rights of the public or of third persons; if one is a mere intruder or usurper, third persons can acquire no rights by his acts. 1-150, 545; 2-615; 3-549

27. Official acts of a deputy clerk appointed for the sole purpose of taking land proofs are void. (See 3-549.) 3-220

28. Where deputy clerks are duly empowered by law to perform the duties of clerks of courts of record, all affidavits, proofs, and oaths required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber-and-stone acts may be made before such deputies with like effect as though made before their principals. 31-286

29. Circular of March 26, 1902, under act of March 11, 1902, relative to officers before whom affidavits, proofs, and oaths may be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber-and-stone acts. 31-274

30. The United States can not be estopped by the frauds, not to say the crimes, of public officials. 2-797

31. Integrity of, not guaranteed by the Government. 2-46; 4-424

32. Acts of, not always conclusive as against the Government. 4-424; 7-220

33. A promise, expressed or implied, by an officer or employee of the Interior Department, that certain results shall follow a certain line of action, can not bind the head of the department or control him in determining the scope of his jurisdiction or the extent of his power. 33-391

34. The United States is not legally bound to make good losses of parties dealing with executive officers of the Government, caused by mistake, inadvertence, or even by misfeasance, negligence, or wrong of such officers. 37-440

OHIO.

See STATES AND TERRITORIES, 139-140; SWAMP LAND, 35, 176.

OIL LANDS.

See COAL LAND, 163, 176-7; MINERAL LAND, 30, 57-60; MINING CLAIM, 600-604, 836-838; RAILROAD GRANT, 876; RIGHT OF WAY, 144, 199½; WITHDRAWAL, 7-8.

OKLAHOMA LANDS.

See INDIAN LANDS; SCHOOL LAND, 9, 27-28, 108, 116, 254-256, 275, 302; TOWN LOT, II; TOWNSITE, II.

1. Regulations with respect to opening the public lands to entry and President's proclamation. 8-336, 341

2. Regulations in the matter of locating townsites in. 10-604, 666

3. Townsite circular of July 10, 1890. 11-24

4. Townsite circular of July 18, 1890, commuted homestead. 11-68

5. Public lands in. General circular of July 21, 1890. 11-79

6. Circular of September 1, 1893, with proclamation opening lands of the Cherokee Outlet. 17-225

7. Sale of ceded lands under section 16, act of March 3, 1891. Instructions of June 8, 1893. 17-51, 52

8. Demand for first installment of purchase money on Pottawatomie and Shawnee lands postponed. 17-263

9. Act of October 20, 1893, extends the time for the first payment on certain ceded lands. Circular of February 14, 1894. 18-50

10. Instructions of May 18, 1895, opening Kickapoo, under act of March 2, 1895. 20-170

11. Homestead settlers on certain ceded lands allowed to commute after 12 months

from the date of location. Circular of February 14, 1894. 18-50

12. Circular of January 9, 1895, under section 19, act of August 15, 1894, providing for commutation and the submission of final proof. 20-1

13. Extension of time for payment on Pottawatomie, Absentee Shawnee, Cheyenne, and Arapahoe lands. 19-296; 20-432

14. Circular of April 13, 1892, opening Cheyenne and Arapahoe lands. 20-7

15. Regulations of July 5, 1910, governing sale of Cheyenne and Arapahoe lands. 40-58

16. Circular of February 25, 1897, under the act of January 18, 1897, opening land in Greer County. 24-184

17. Circular of August 20, 1903, amending instructions of February 25, 1897, relating to lands in Greer County. 32-236

18. Greer County lands; instructions of April 13, 1899, under act of March 1, 1899. 28-274

19. Commutation of homesteads under act of April 11, 1898; circular. 26-567

20. The mining laws have no application to sections 16 and 36 in the Cherokee Outlet, reserved to the Territory of Oklahoma, and granted to the future State, for school purposes. 35-113

21. The homestead entry of one who enters the Territory prior to the time fixed therefor is not void, but voidable, and while of record segregates the land. 20-147

22. On a charge that an entryman entered the Territory in advance of the hour fixed therefor it is incumbent upon the contestant to show such fact by a clear preponderance of the testimony. 22-47

23. In a contest between applicants, involving priority of settlement, the question of "soonerism" is necessarily raised as to each party, whether formally charged or not. 24-61

24. The act of March 2, 1889, prohibits anyone from entering the territory thereby opened to settlement and entry, prior to the hour fixed by proclamation, with the intention of settlement on any part thereof. 11-330; 13-66

25. Settlement right not acquired by occupation of land prior to the time fixed by the President's proclamation. 16-132

26. The provisions of the act of March 2, 1889, with respect to excluding claim-

ants from the Territory until the hour of opening, are applicable alike to the lands acquired from the Creek and Seminole Indians. 21-176

27. The prohibition in section 14, act of March 2, 1889, against entering the Territory prior to the time fixed therefor, is applicable to the Sac and Fox lands, becoming effective from the date of the act opening said lands to settlement. 21-274; 24-301

28. The prohibitory provisions of section 14, act of March 2, 1889, extend to lands formerly in the Cheyenne and Arapahoe Reservation, and became effective March 3, 1891, the date of the act announcing the acquisition of the Indian title to said lands. 21-267

29. The inhibition as to lands within the Cherokee Outlet runs from the date of the President's proclamation, August 19, 1893, opening said lands to settlement. 21-496; 22-310; 25-55, 279

30. In determining the qualifications of entrymen, in so far as affected by entering said Territory within the prohibited period, it is not practicable to lay down any general rule. 21-40

31. The prohibitory provisions in the acts opening to settlement were intended to include persons who entered the Territory prior to their respective dates, and there remained in violation of said provisions, as well as those who entered subsequently. 18-591

32. Information of a general character as to desirable lands, communicated by another prior to the opening, does not disqualify the entryman. 18-31

33. Where the evidence shows that claimant was within the Territory during the inhibited period, it is incumbent upon him to show that his purpose was not to acquire advantage over others, and in fact did not. 21-153

34. Where there is doubt as to the actual boundary of lands about to be opened to settlement, and a Government official, for the purpose of securing equal opportunities to all, designates a line from which the run shall be made, it is incumbent upon one who disregards such designation to show that by such action he gained no advantage over others. 24-32

35. A settler who on the day of opening enters the Territory prematurely, with many others, through misapprehension as to the signal for entrance, must show, as against one who enters at the proper time, that no advantage was gained by such premature entry. 25-341

36. One who in the ordinary prosecution of his business enters said Territory during the prohibited period, but does not thereby add to his prior knowledge of the country nor secure advantage over others, and is outside the Territory at the hour of opening, is not disqualified as a settler. 21-40, 176; 22-121; 28-303

37. Entrance within the Territory during the prohibited period for the sole purpose of procuring water for domestic use does not operate as a disqualification of the settler. 22-613

38. Presence within the Territory during the inhibited period does not operate as a disqualification if no advantage is sought or gained thereby. 25-273

39. Presence within the Territory during the prohibited period, by which advantage over others is gained, operates to disqualify a claimant for land in said Territory. 26-393

40. Presence within the Territory (on railroad track adjacent to the land claimed) at the hour of opening disqualifies a settler who goes upon the land at such time. 25-489; 27-438

41. One who voluntarily and unnecessarily enters the Territory during the prohibited period, and is within said Territory at the hour of opening, is disqualified as a settler therein. 21-160

42. No permission to be within the Territory by virtue of special employment therein can be granted as against the express terms of the act of 1889. 11-330

43. The disqualification imposed upon persons who enter the Territory prior to the time fixed therefor can not be ignored on the ground that the settler was misinformed as to the law. 19-520

44. The provision in the act opening to entry to the effect that rights of honorably discharged soldiers shall not be abridged does not except such soldiers from the terms of the clause in said act pro-

hibiting all persons from entering said Territory prior to the time fixed therefor. 19-31, 521; 21-535

45. One who enters the Territory during the prohibited period can not avoid the resulting disqualification by the plea that he "merely entered the Territory on a pleasure trip." 18-520

46. One who is permissibly within the Territory prior to the opening, and seeks to take advantage of his presence therein, has "entered and occupied" the same in violation of the statute, and is disqualified to enter any of said lands or acquire any right thereto. 11-330; 12-653; 13-409; 15-266, 451

47. The disqualification imposed by the act of March 2, 1889, extends to an applicant who remains outside the Territory until noon of April 22, 1889, but seeks to evade the prohibitory operation of the statute through the assistance of another whom he has theretofore employed to enter said Territory for such purpose. 13-66

48. An entry made through the assistance of another, who enters the Territory in violation of law and holds the land until claimant makes entry thereof, is illegal and must be canceled. 18-560

49. A settler can not evade the prohibitory effect of the statute with respect to entering the Territory through the assistance of one who enters the same prior to the time fixed therefor. 13-562

50. One who employs another to enter the Territory prior to the hour of opening, with the view to securing advantage over others, is thereby disqualified, though it may not appear that he settled on the tract occupied by the person so employed. 27-696

51. A soldier's declaratory statement filed on April 22, 1889, through an agent who was in the Territory prior to 12 o'clock noon of said day, is illegal. 12-653; 20-334; 21-496

52. The fact that a soldier's declaratory statement is filed by an agent after the lands are duly opened will not make such claim valid if the principal was in said Territory at the hour of opening. 21-535

53. One who after March 2, 1889, and prior to noon of April 22, 1889, enters the Territory for the purpose alone of remov-

ing his cattle therefrom, in obedience to an order of the military authorities, is not disqualified thereby as a homesteader.

18-128

54. Presence within the Territory during the greater part of the period from March 2, 1889, to the hour fixed for opening disqualifies the person so present as a homesteader, unless it appears that he was lawfully within the Territory. (See 21-40.)

18-112

55. The acceptance of employment within the Territory in advance of the opening, and in anticipation thereof, disqualifies the applicant, though outside of the Territory during the prohibited period, where by the nature of the applicant's employment he obtains special information.

18-520

56. One who is lawfully within the Territory at the passage of the act of March 2, 1889, and so remains until the lands are opened, but does not take advantage of his presence as against others, is not disqualified by such presence from acquiring title in said Territory. (See 17-414; 21-40.)

14-593

57. One within the Territory at noon on April 22, 1889, is by his presence in said Territory disqualified to thereafter enter lands therein. (See 21-40.)

17-414; 18-495

58. A person who at the hour of opening is rightfully on reserved land within said Territory (the "Government acre") is by reason of such presence disqualified from making the run on the day of opening, but is not necessarily disqualified from thereafter making entry of lands in said Territory if by his presence therein he secured no advantage over others.

23-522

59. One who knowingly enters the Territory prior to the hour fixed for the opening becomes thereby disqualified as a homesteader. (See 21-40.)

18-112

60. One rightfully in said Territory prior to the opening can not take advantage of his presence therein to secure a settlement claim in advance of others.

16-132

61. Residence within the Territory (under permit from the War Department), and presence therein during the prohibited period, does not disqualify a settler where no advantage is gained over others and

the claimant is outside the boundary line at the hour of opening.

21-151

62. One who at the hour of opening is within the Territory, engaged by authority in the survey of a townsite, is disqualified by such presence from making the run on the day of opening, but not necessarily disqualified from thereafter entering lands in said Territory if by such presence he secured no advantage over others.

27-277

63. One within the Territory prior to the act of March 2, 1889, and within a few days thereafter leaves, and remains outside during the rest of the prohibited period, is not by such presence disqualified as an entryman where the facts do not raise any question as to advantage gained by the claimant.

21-147

64. Knowledge of lands within the Territory acquired by presence therein prior to the prohibited period can not disqualify a settler who subsequently complies with the prohibitive terms of said act.

21-284; 24-92, 420; 28-169

65. One lawfully within prior to the opening and afterwards goes outside the boundaries and takes no advantage of his former presence in said Territory is not disqualified as a settler therein.

16-253; 21-148

66. One who enters the Territory prior to the opening, in order to secure a starting point near the tract desired, is disqualified thereby as an entryman, though outside of the Territorial boundary at the hour of opening.

18-218

67. Presence within the Territory, after the act but prior to the proclamation, will not disqualify the settler if he was not then within said Territory for the purpose of selecting lands, and by his presence therein secured no advantage.

23-63

68. One who by misadventure is within the Territory prior to its opening, but subsequently goes outside and there remains until the time fixed for the opening and secures no advantage by his previous presence, is not disqualified thereby.

16-375

69. One who by mistake enters the Territory prior to the time fixed for settlement therein, but takes no advantage of his presence and leaves on discovery of his mistake, is not thereafter disqualified to enter lands in said Territory.

15-580

70. One unlawfully within the Territory prior to the time fixed, and takes advantage of such presence to select land in advance of others, is disqualified thereby to make entry of land in said Territory, though he subsequently goes outside the boundaries thereof and there remains until the time fixed for opening. 17-523

71. The disqualification imposed upon persons entering the Territory prior to the time fixed therefor extends to one who thus enters said Territory for the purpose of securing information that would give him an advantage over other applicants, though he subsequently returns to the "line" and there awaits the signal for entrance, and ultimately does not settle on the tract first selected. 17-175

72. One within the Territory after the act of March 2, 1889, and subsequently goes outside the boundaries thereof, and there remains until the time fixed for entering the same, but takes advantage of his former presence therein, either through his own knowledge of the lands subject to settlement, or by collusion with another, to secure a tract in advance of others is thereby disqualified as a settler under said act. 17-402

73. Crossing the Territorial line (to obtain water) prior to the hour fixed for entering does not disqualify the settler, it appearing that he returned to the boundary line and there awaited the hour for entering, that the watering place visited was used by the people camping in that vicinity, and was not in the neighborhood of the land settled upon. 18-598

74. Advantage gained by repeatedly passing through the Territory on a railroad train during the prohibited period, for the purpose of locating a desirable tract, operates to disqualify the entryman. 27-74

75. Entry within the Territory during the prohibited period by passing through the country over a public highway does not operate to disqualify an applicant for land within the Sac and Fox country. 23-186

76. Section 13, act of March 2, 1889, prohibits the examination and selection of a tract after the date of said act and prior to the opening of the lands embraced therein. 15-389

77. The prohibitive provisions in the act of March 3, 1893, with respect to the Cherokee strip, were enacted at a time when the similar provisions in the act of March 2, 1889, were liberally construed by the department, and when the question of "advantage gained" by presence in the Territory during the prohibited period was regarded as a proper one for consideration in determining the qualifications of a settler. 25-504

78. One within the Outlet at the date of the President's proclamation, occupying a tract of leased land by consent of the Indian agent, but who goes outside thereafter, and there remains until after the opening, is not disqualified as a settler if, by his former presence within the prohibited territory, he secured no advantage over others. 25-380

79. Where a party of intending settlers select as their starting point in the race a stream that constitutes a boundary of the territory, and, finding the bed of said stream affords a doubtful crossing place, procure its improvement prior to the hour of opening, such act will not disqualify a member of said party as a settler. 23-169

80. The action of the department in forbidding persons from making the run into the Cherokee Outlet on the day of the opening from any of the Indian reservations on the eastern boundary of said lands is not inconsistent with the statute, and one who violates said order is disqualified thereby as a settler. (See 23-533.) 20-446

81. By the proclamation opening the Cherokee Outlet a strip of land 100 feet in width immediately within the outer boundary of the entire tract was set apart for the occupancy of intending settlers; and, if it be conceded that the Secretary could thereafter modify said regulation, such action could only be taken after the notice required by statute. 23-533

82. The regulations opening the Cherokee Outlet, made under direction of the President and incorporated in his proclamation, provided for an entering strip 100 feet in width immediately within the outer boundaries of the entire tract, and can not be abrogated or modified by act of the Secretary alone. 25-55

83. In determining the location of the 100-foot strip opened to occupancy "immediately within the outer boundaries" of the Cherokee Outlet, where a meandered river forms a boundary thereof, the strip should be measured from the meander line of said stream. 28-167

84. Persons making the run from the 100-foot strip are not disqualified as settlers by the fact that in entering thereon they passed over an adjacent Indian reservation. 23-533; 25-55

85. The prohibitory provisions of the statute opening the "Cherokee Outlet," and the President's proclamation thereunder, did not apply to the whole of said Outlet, but only to such portion as should be declared open to settlement under said proclamation, and hence are not applicable to Indian reservations within said Outlet excluded from settlement but adjacent to the lands opened under said proclamation. 25-55

86. A settler on Oklahoma lands is not disqualified by starting into the race from the 100-foot strip on the Chilocco Indian School Reservation. 25-285, 334

87. A settler on lands opened by the act of March 3, 1891, is not disqualified by making the "run" on the day of opening from an adjacent Indian reservation. 24-92; 25-373

88. The departmental inhibition against making the race from Indian reservations is applicable to lands which the Indians have the right to use and occupy, and not to lands in which the Indians have no such right. 21-369

89. The prohibitive provisions in the act were directed against persons otherwise qualified to make entry, and not against persons who for other reasons were then disqualified and by their presence in the Territory took no advantage over others. 21-370

90. The prohibition in the proclamation and departmental regulations against using the mails for the purpose of filing soldiers' homestead declaratory statements, is authorized by the law opening the lands in said Territory to settlement. 21-551

91. Failure to file a "nonsooner" affidavit with a soldier's declaratory statement may be subsequently remedied, even

though an intervening adverse claim to the land may be asserted. 26-54

92. A refusal to issue a booth certificate on account of a statement by the applicant that he has been "in the Cherokee Outlet every other day to procure water for his own use" is not justified where the application is otherwise in due form. 22-613

93. No question with respect to the regularity of departmental action in the establishment of a booth, as affecting the qualifications of one holding a certificate issued therefrom, will be entertained, in the absence of a showing of advantage gained thereby. 28-267

94. Occupancy of, by an Indian located under authority of the Government, is not affected by the act prohibiting the acquisition of settlement rights prior to the time fixed therein. 15-584

95. The occupancy of, through mistake, but under authority of the Government, by a white man having an Indian wife, may be protected, under the supervisory power of the Secretary, through the allowance of a homestead entry on the part of such occupant, though he was occupying the land during the inhibited period. 20-101

96. A homestead entry of land within said Territory made for the purpose of selling the land to townsite occupants is illegal, and priority of settlement in such case confers no right upon the entryman. 12-654; 21-496

97. In commuting an entry under section 21, act of May 2, 1890, military bounty land warrants can not be used. The land must be paid for in cash at \$1.25 per acre. 16-160

98. The commutation of an entry under section 21, act of May 2, 1890, can not be allowed when it is apparent that the land is intended for townsite purposes and not for agricultural use. 13-99

99. The right of second entry under section 13, act of March 2, 1889, is determined by the status of the applicant at the time of his application; and if, at such time, he has attempted to secure title under law existing at the passage of said act but failed, he is qualified as an entryman thereunder so far as his previous entry is concerned. 29-246

100. The right of one who has abandoned all claim under a prior entry to make a second entry under section 13, act of March 2, 1889, is not affected by the fact that at the date of his settlement the prior entry had not been canceled of record. 28-449; 29-108

101. The right to make a second homestead entry conferred by section 13, act of March 2, 1889, does not extend to one who purchased the land covered by his first entry under section 2, act of June 15, 1890. 22-484

102. Section 7, act of February 13, 1891, allowing an entry of lands, ceded by the Sac and Fox Nation and Iowas, to be made by persons who had previously commuted a homestead, applies only to entries made under section 2301, R. S., and not to entries commuted under the special provisions of section 21, act of May 2, 1890. 17-46

103. Under the last proviso to section 3, act of March 3, 1893, opening the Kickapoo lands, a person who has, at the date of his application under said act, attempted but for any cause failed to acquire title to a homestead under existing law, or shall have made entry under the commuted provision of the homestead law, is entitled to make a homestead entry of said lands. 28-303

104. Section 10, act of March 3, 1893, makes the provisions of section 13, act of March 2, 1889, applicable to the lands in the Cherokee Outlet, not only as to the manner of opening said lands but also as to the qualifications of claimants therefor. 29-108, 246

105. The right to make a second homestead entry conferred by the act of March 2, 1889, upon persons "who having attempted to but for any cause failed to secure a title in fee to a homestead under existing law," is applicable to entries in the Cherokee Outlet, and is determined by the status of the applicant at the date of his application. 29-372

106. Lands in the Cherokee Outlet, opened by the act of March 3, 1893, are subject to the provisions of the acts of June 5, 1900, and April 28, 1904, relating to second homestead entries. 37-151

107. One who made a homestead entry of lands in the Cherokee Outlet under the

act of March 3, 1893, which he subsequently abandoned, is not entitled to make another entry of any of said lands under the provision of section 13, act of March 2, 1889, authorizing second entries, incorporated into the act of March 3, 1893. 37-188

108. In view of the provisions of section 13, act of March 2, 1889, and section 2, act of June 5, 1900, one who has made a cash entry of Cheyenne and Arapaho lands under the act of October 20, 1893, is entitled to make a second homestead entry of lands in the Cherokee Strip. 31-49

109. The act of May 17, 1900, known as the free-homestead act, operated to abrogate the general rule that requires payment for the excess area embraced in homestead entries containing more than 160 acres in so far as such rule prior to said act affected the entry of lands designated therein. 31-162

110. Settlers on the "Public Land Strip" are not entitled to credit for more than two years' residence prior to the act of May 2, 1890. 15-363

111. The preferred right of entry of lands in the Public Land Strip accorded all *bona fide* settlers by section 18, act of May 2, 1890, extends only to persons occupying such status at the date of the act and who thereafter make entry within a reasonable time and show due compliance with law. 27-243

112. The fact that a person has commuted a homestead entry does not disqualify him from making a homestead entry within the Public Land Strip. 19-540

113. Prior to the enactment of May 2, 1890, the ownership of other land was not a limitation upon the right of homestead entry in Oklahoma. 27-438

114. The special provision in section 20, act of May 2, 1890, limiting the right of homestead entry to persons not "seized in fee simple of one hundred and sixty acres," etc., is not repealed by the general provisions in section 5, act of March 3, 1891, amending section 2289, R. S. 23-547

115. The provision in section 20, act of May 2, 1890, that "no person who shall at the time be seized in fee simple of a hundred and sixty acres of land in any State or Territory shall hereafter be entitled to enter land in said Territory"

extends to one who holds such an amount of land under a deed of absolute conveyance, subject only to defeasance on breach of condition subsequent on the part of the grantee. 21-503

116. One who has by a valid contract sold and agreed to convey lands the legal title to which remains in him only as security for the unpaid purchase money is not, within the meaning of the act of May 2, 1890, seized in fee simple of such lands. 30-370

117. The disqualification of a homestead claimant in Oklahoma, arising from the ownership of other land, is limited to ownership in fee simple, and does not extend to a legal title held in trust for the benefit of another. 27-705

118. To establish the allegation that an entryman is disqualified by the ownership in fee simple of 160 acres, the proof must show that the entryman owned in full said quantity or more. 28-187

119. A deed executed prior to the making of a homestead entry, apparently for the purpose of conveying the title in trust for the benefit of the entryman, will not defeat the inhibitory provision of the statute limiting the right of homestead entry to persons not owning 160 acres of land. 20-557

120. A final certificate for 160 acres invests the holder with a fee-simple title thereto, and, under section 20, act of May 2, 1890, operates to disqualify him as a homestead claimant. 27-702

121. A remainderman in fee after a life estate is not, during the continuance of the life estate, "seized in fee simple" within the meaning of section 20, act of May 2, 1890. 36-397

122. A homestead made with intent to use part of the land as a townsite is invalid in its entirety, and the invalidity can not be limited to particular tracts either by relinquishment or purchase of a portion of the land under section 21, act of May 2, 1890. 14-452

123. Commutation of a homestead under section 21, act of May 2, 1890, can not be allowed where it is apparent the land is intended for townsite purposes. 14-13

124. The nontownsite affidavit required in the case of a homestead commuted under section 21, act of May 2, 1890, is a

proper regulation in the execution thereof; and the affidavit thus required should be executed within the county or district where the land is situated. 22-533

125. Under section 22, act of May 2, 1890, the entryman may purchase for townsite purposes such subdivisions as may be required therefor and perfect title to the remainder under the homestead law. 13-99; 14-13

126. An entryman who desires to purchase for townsite purposes under section 22, act of May 2, 1890, must show that he is entitled to perfect title under the homestead law without reference to the fact that the land is occupied and required for townsite purposes. 14-146

127. In the commutation of a homestead for townsite purposes under section 22, act of May 2, 1890, the entryman is required to pay for the acreage embraced in the streets and alleys of the proposed townsite. 21-426

128. A homesteader who has voluntarily parted with control of the greater part of his land and agreed to convey title thereto when his claim is perfected is disqualified as a homesteader, and hence can not purchase under section 22, act of May 2, 1890. 14-146

129. Lands acquired from the Sac and Fox Nation under the agreement approved February 13, 1891, and included within a homestead entry, may be purchased for townsite purposes under section 22, act of May 2, 1890. 14-419

130. Payment for land purchased under section 22, act of May 2, 1890, should be made in currency or by draft on New York, exchange paid. 14-419

131. The right to make a second homestead entry under section 7, act of February 13, 1891, may be exercised by one whose first entry was made prior to said act, and relinquished subsequently thereto in the settlement of a contest. (See 26-448.) 19-288

132. The right to make homestead entry of land within the former Cheyenne and Arapahoe Reservation (but not included in the Creek cession of January 19, 1889), can not be exercised by one who has previously commuted a homestead entry. 18-406

133. The right to make a second homestead entry is not conferred by the act of March 3, 1891, opening the Cheyenne and Arapahoe lands. 15-296

134. The right to make second homestead entry conferred by section 13, act of March 2, 1889, upon persons who had commuted a former entry, is extended by section 18, act of May 2, 1890, to Pottawatomie lands that were part of the original Seminole purchase. 15-356

135. A homestead declaratory statement filed and relinquished after the act of March 2, 1889 (25 Stat., 980), defeats the right of second entry under section 13 of said act. 18-520

136. The right to make homestead entry of, conferred by section 13, act of March 2, 1889, upon persons who had previously made homestead entry and commuted the same, is extended by section 18, act of May 2, 1890, to lands acquired by cession from Muscogee Indians. 17-118

137. The right to make entry of lands obtained from the Muscogee or Creek Indians, as provided in the first proviso to section 13, act of March 2, 1889, does not extend to one who has failed to secure title to a particular tract under the homestead law, if such person has secured title to other land under said law; but the right to make entry under said section does include one who has made entry under the commutation provisions of the homestead law. 27-300

138. The commutation of a homestead under section 2301, R. S., does not disqualify the entryman as a subsequent homestead claimant for lands within the Cheyenne and Arapahoe Reservation, acquired by cession from the Creek or Muscogee Indians. 17-543

139. Congress having limited the disposal of the lands formerly within the Cheyenne and Arapahoe Reservation and opened to settlement under the act of March 3, 1891, to actual settlers only, under the homestead and townsite laws, said lands are not subject to disposal under section 2455, R. S., providing for the sale of isolated tracts. 33-447

140. The right to make second entry under section 13, act of March 2, 1889,

can not be exercised where the original is made after said act. (See 26-448.) 15-374

141. In determining the qualifications of an applicant for lands obtained from the Seminole and Creek Indians, as provided for in the first proviso to section 13, act of March 2, 1889, the status of the applicant at the date of his application must control; and if he has at such time attempted, but for any cause failed, to secure title to a homestead, or shall have made entry under the commutation provision of the homestead law, he is qualified to make entry under said section. 26-448

142. Under the statutes of Kansas the ownership of land is not divested by a mortgage, hence a mortgagor in that State can not plead that by reason of such mortgage he is not "seized in fee" of said land, and therefore is not disqualified as a homesteader under section 20, act of May 2, 1890. 23-251

143. A tax sale in Kansas does not operate to divest the original owner of title until a deed is made thereunder, and, prior to such time, would not relieve an entryman from the disqualification imposed by section 20, act of May 2, 1890. 23-547

144. A quitclaim deed of a small tract to township authorities for "road purposes," executed by one who previously owned 160 acres, effectually divests the grantor of title to the land so conveyed, and he is thereafter not the owner of 160 acres within the meaning of section 20, act of May 2, 1890. 23-251

145. A transfer of land by an intending homesteader will not relieve him of the disqualification imposed by section 20, act of May 2, 1890, if not made in good faith, but for the purpose of evading the statutory inhibition. 24-248

146. The fact that a settler is not disqualified by the ownership of land at the date of his settlement will not relieve him from the effect of the statutory inhibition, if he subsequently becomes the owner in fee simple of 160 acres while his rights, as against an adverse claimant, are dependent upon the maintenance of his status as a qualified settler. 28-198

147. The limitation in section 20, act of May 2, 1890, of the right to make

homestead entry in Oklahoma, to persons not "seized in fee simple of one hundred and sixty acres of land," disqualifies one who owns a "quarter section," entered as such, though the area of the tract thus owned may fall short of 160 acres by a small fraction, as shown by the field notes of survey. (See 26-369.) 24-248

148. The limitation by section 20, act of May 2, 1890, of the right of homestead entry in Oklahoma to persons who are not "seized in fee simple of one hundred and sixty acres of land in any State or Territory" does not operate to disqualify an applicant for such right who may at such time own a less amount, though the land thus held may have been taken as a technical "quarter section." 26-369

149. The provision in section 16, act of March 3, 1891 (26 Stat., 989), that the lands specified therein shall be opened to settlement "under the provisions of the homestead and townsite laws," construed to mean that said lands are to be opened to settlement under the homestead and townsite laws governing the disposition of lands in Oklahoma, and not operating to repeal the provision contained in section 20, act of May 2, 1890, disqualifying as homesteaders all persons owning 160 acres in any State or Territory, and applicable to all lands in Oklahoma. 24-242

150. The act of May 22, 1902, gives to the class of persons therein specified a new and independent right to make a homestead entry for not exceeding 160 acres, without restriction or qualification, and the provisions of section 20, act of May 2, 1890, holding disqualified to make homestead entry in Oklahoma any person seized in fee simple of 160 acres of land in any State or Territory, are therefore superseded by the provisions of the act of May 22, 1902, to the extent of the class of persons therein described. 35-167

151. The privilege of making a homestead entry, without regard to the ownership of other land, was not one of the rights of soldiers and sailors defined and described in sections 2304 and 2305, R. S.; hence the subsequent legislation making the ownership of other lands a general disqualification does not abridge any right conferred by said sections. 26-61

152. The right to make additional homestead entry under the act of February 10, 1894, can not be exercised by one whose claim to the land embraced in his original entry was initiated after the passage of said act. 26-190

153. The special right to enter additional lands conferred by the act of February 10, 1894, when such additional lands become subject to entry, is defeated by prior selection of the land as school indemnity under the act of March 2, 1895. 24-91

154. The privilege of making an additional homestead entry under the act of February 10, 1894, of lands on the south side of the Deep Fork River, as against adverse claimants, rests upon priority of initiation of claim to such lands, and not upon priority of settlement on the land north of said stream. 28-165

155. An "occupant" of land, as the word is ordinarily used, is one who has the "use and possession" thereof, whether he resides upon it or not, and Congress so used the word in the act of January 18, 1897; it therefore follows that any qualified claimant who, on March 16, 1896, was in the actual use and possession of the land claimed by him, is entitled to the benefits of the first section of said act, whether actually residing upon the land at that date or not. (Greer County.) 28-537

156. Where a *bona fide* occupant of lands in Greer County, as the head of a family, has taken the full amount of land to which he is entitled under the act of January 18, 1897, a member of his family, over the age of 21, other than husband or wife, may take, under said act additional or "excess" lands, not to exceed 160 acres. 29-340

157. If the head of the family fails to exercise his rights within the time accorded by the act of January 18, 1897, any duly qualified member of his family, other than husband or wife, may succeed to his rights for three months longer, with the limitation that such member can take only 160 acres. (Greer County.) 29-340

158. The right conferred by section 1, act of January 18, 1897, to purchase lands additional to those entered under the homestead law, is not limited by any

requirement that the tract so purchased shall be contiguous. (Greer County.)

29-532

159. One who exhausts his homestead privilege and also his right to purchase additional land under section 1, act of January 18, 1897, surrenders thereby any right he may have acquired under said section as a *bona fide* occupant of other lands.

30-83

160. The preference right of entry accorded by section 1, act of January 18, 1897, is limited to *bona fide* occupants of the land on March 16, 1896.

32-308

161. Under said section a widow is entitled to make entry of any land in Greer County, not exceeding 160 acres, upon which her deceased husband had actually established a residence prior to March 16, 1896, which she can perfect under her widow's right; and can also enter in her individual right other lands, not exceeding 160 acres, of which she was an actual *bona fide* occupant on March 16, 1896, and can purchase, in her individual right, 160 acres of additional land of which she was in actual possession on said date; but she has no right of purchase of additional land, as widow, under said section, by virtue of any occupancy of her husband.

32-308

162. Lands in Greer County opened by the act of January 18, 1897, "to entry to actual settlers only, under the provisions of the homestead law," are not subject to disposal under the timber-and-stone act or the general mining laws.

36-170

163. Where a claimant makes entry under the act of January 18, 1897, as an occupant, and it afterwards appears that he was not an occupant on March 16, 1896, of one of the tracts included in his entry, the entry may nevertheless be allowed to stand for such tract, under section 2 of said act, where he was an "actual settler" and residing upon a portion of the land at the date of entry and no valid prior right had attached.

30-83

164. An "occupant" within the meaning of the act of January 18, 1897, must have not only the possession, but the actual use and enjoyment of the land; hence, one who had parted with the actual use and enjoyment of his land, and had not, on March 16, 1896, renewed such use

and enjoyment, was not on that date a *bona fide* occupant, and is therefore not entitled to the preference right of entry accorded by section 1 of said act.

30-435

165. Section 4, act of January 18, 1897, reserving sections 13 and 33 in Greer County for "such purpose as the future State of Oklahoma may prescribe," makes provision for indemnity only for lands in said sections which are found to have been "occupied by actual settlers or for townsite purposes or homesteads" prior to March 16, 1896, and as the right to indemnity under sections 2275 and 2276, R. S., is limited to sections reserved for school purposes, there is no law authorizing indemnity for losses in sections 13 and 33, in said county, occasioned by such sections being fractional.

30-87

166. The purpose of the words "excepting for school purposes," in section 5, act of January 18, 1897, is to except from the obligation to make payment imposed by said section, all lands patented thereunder by reason of being occupied for school purposes.

32-195

167. Nonsaline affidavits are not required in connection with lists of selections under section 12, act of June 16, 1906.

35-509

167½. The amount of fees collectible on account of selections made under said section shall be determined by dividing the total amount of lands embraced in a list by 160, and the fees computed at the rate of \$2 for each 160 acres selected and for any remaining fraction.

35-509

168. A homestead entry of record at the date of the act of June 16, 1906, excepts the land covered thereby from the provisions of section 8 of that act, reserving section 13 for the benefit of the future State of Oklahoma, and upon cancellation thereof the reservation declared by that section does not attach, but the land becomes public domain subject to disposition as other public lands.

36-334

169. A soldier's declaratory statement of record at the date of the act of June 16, 1906, excepts the land covered thereby from the provisions of section 8 of that act, reserving section 13 for the benefit of the future State of Oklahoma.

38-172

170. The right to purchase 160 acres conferred upon D. W. Bushyhead by act

of March 3, 1893, can not be exercised to defeat rights of selection provided for in the agreement of December 19, 1891, or the rights of the Chillico school or any other reservation. 16-431

171. Under section 6895, Wilson's Statutes of Oklahoma (1903), governing descent, succession is cast directly upon the lineal descendants, and where decedent left surviving no children, but grandchildren, and great-grandchildren issue of deceased grandchildren, the right of representation begins with the rank of the nearest living descendants—that is, the grandchildren—the great-grandchildren taking, by representation, the shares of their deceased parents. 40-102

172. The right of dissent accorded by section 5 of the act of February 18, 1838, from the statutory allowance to the tribe or nation provided for by said act on account of right of way granted, is limited to a dissent by the general council of either the nation or tribe named, and there is no authority for the acceptance of a dissent by the principal chief of such nation or tribe; nor is the department authorized to extend the time within which such dissent may be certified. 31-192

173. Certain lands in Tps. 7 and 8, Rs. 14 and 15, held in reservation for Kiowa and Comanches. 15-87

174. Proclamation opening Kiowa, Comanche, Apache, and Wichita ceded lands. 31-1

175. Circular of July 5, 1901, with respect to qualifications of homestead entrymen in Wichita and Kiowa, Comanche and Apache ceded lands. 31-9

176. Regulations of August 5, 1901, concerning opening of Wichita and Kiowa, Comanche and Apache ceded lands. 31-62

177. Regulations of August 5, 1901, concerning opening of Wichita and Kiowa, Comanche and Apache ceded lands, amended. 31-63, 67

178. Circular of September 16, 1901, relative to disposition of Wichita and Comanche, Kiowa and Apache lands after expiration of "60 days' period." 31-107

179. The general provisions of the townsite laws control in the allowance of townsite entries upon the lands ceded by the

Kiowa, Comanche, and Apache Indians; and the special provision, authorizing the commutation of homestead entries for townsite purposes, in the second proviso of section 22, act of May 2, 1890, is not applicable to entries upon said lands. 31-144

180. The provision of section 22, act of May 2, 1890, that not less than 10 acres shall be reserved for public purposes in every townsite in the Territory of Oklahoma, is a general provision applicable to all lands in said Territory open to settlement and entry at the time of the passage of the act, except those expressly withheld from its operation, and to all lands in said Territory thereafter opened to settlement and entry; and there is nothing in the act of June 6, 1900, to except the lands thereby opened to settlement and entry from the force and effect of said provision. 32-502

181. The unauthorized and illegal occupancy for townsite purposes of public lands, subject to homestead entry only under the proclamation of July 4, 1901, constitutes no bar to such entry thereof by one who asserts a right by virtue of compliance in good faith with the law and regulations relating to the entry of such lands. 32-71

182. Of the lands ceded by the Wichita and affiliated bands of Indians, under agreement ratified by the act of March 2, 1895, sections 16 and 36, 13 and 33, reserved for school purposes, are subject to the operation of the mining laws; but the like numbered sections reserved for school purposes of the lands ceded by the Comanche, Kiowa, and Apache Indians under agreement ratified by the act of June 6, 1900, are not subject to such laws. 32-95

183. Any lands ceded by either of said agreements, which have been heretofore set aside and reserved by the Secretary for county-seat townsites, under the act of March 3, 1901, or which have been reserved and appropriated, by authority of law, for any other specific purpose, are not subject to the mining laws. 32-95

184. Sections 16, 36, 13, and 33 of the lands ceded by the Comanche, Kiowa, and Apache Indians under agreement ratified by the act of June 6, 1900, reserved for

school and other purposes, are not subject to the operation of the mining laws.

34-54

185. From the time of the passage of the act of June 6, 1900, the lands which were to be allotted or opened to settlement thereunder were subjected to the mining laws, and to mineral exploration and entry, so long as they should remain free from any vested right of individual ownership.

31-125

186. Upon the allotment of said lands in severalty, or upon title thereto being earned by a homestead entryman by compliance with law, the lands allotted, or embraced in a homestead entry, cease to be subject to the mineral provision of said act.

31-125

187. Valuable mineral deposits which may be found upon land allotted in severalty under the act of June 6, 1900, can not be acquired under the mining law; but such land may, with the approval of the Secretary, be leased by the allottee under the general statute relating to mining leases by Indian allottees.

31-125

188. The provision of the act of June 6, 1900, whereby the mining laws were extended over the lands ceded by the Comanche, Kiowa, and Apache Indians, was not intended to operate as an exception to the settled principles applied in the administration of the public land laws generally. Controversies between mineral and agricultural or townsite claimants, as to any of said lands, are to be determined upon the same principles which apply to like controversies with respect to the public lands elsewhere.

31-154

189. No mining location of land within the county-seat townsites of Lawton, Anadarko, or Hobart, made after the special reservation of those townsites on June 24, 1901, under the act of March 3, 1901, is of any validity or effect whatever.

31-154

190. Congress having made no provision for a United States surveyor general for the Territory of Oklahoma, and not having authorized the duties required to be performed by a United States surveyor or surveyor general in the administration of the mining laws generally to be performed in said Territory by any other officer, it is the duty of the Commissioner of the

General Land Office, in administering the mining laws as extended over the aforesaid ceded lands by the act of June 6, 1900, to perform, under the direction of the Secretary, all executive duties appertaining to the surveying of mining claims located upon said lands, with the view of obtaining patents for such claims, and all similar duties in any manner respecting the conduct of proceedings to obtain such patents, and to enforce and carry into execution any and every part of the provisions of the mining laws with respect to said ceded lands, not otherwise specially provided for in the act extending said laws over said lands.

31-125

191. Where a person, in violation of the act of March 3, 1901, goes upon the land opened to settlement and entry by said act, prior to the expiration of the 60-day period, he does not, by his wrongful presence on the land at the expiration of such period, acquire any right which will be recognized as superior to the rights of one who goes upon the land immediately upon the expiration of said period and makes settlement thereon as soon as it becomes legally subject to settlement and entry.

33-192

192. The selection and entry of land adjacent to a townsite, by a duly qualified and registered homestead applicant, is not in violation of the letter or spirit of the law under which the lands in the territory ceded by the Comanche, Kiowa, and Apache Indians were opened to settlement and entry.

31-83

193. In making homestead entry of lands in the territory ceded by the Comanche, Kiowa, and Apache Indians, it is not necessary that the lands shall be taken in square form; but the general provision of the act of March 3, 1891, amending section 2289, R. S., which directs that land to be taken as a homestead shall "be located in a body in conformity to the legal subdivisions of the public lands," will control as to the form of entries of these lands.

31-83

194. All persons who have acquired title to a homestead by commutation, whether under section 2301, R. S., or under any one of the special acts relating to Oklahoma lands, are, if otherwise qualified,

entitled to enter a homestead of the Comanche, Kiowa, and Apache lands.

31-46

195. Commutation may be allowed of all homestead entries made under the act of June 6, 1900, without reference to whether the entryman had previously commuted an entry under section 2301, R. S. 31-445

196. Judicial proceedings instituted to compel the Secretary of the Interior, by writ of mandamus, to allot certain lands to a member of the Comanche tribe of Indians, under the agreement ratified by the act of June 6, 1900, the courts, so far as the matter has proceeded, having ruled against the petition for mandamus, will not prevent the commutation of a homestead entry for townsite purposes, under section 22, act of May 2, 1890, and the act of March 11, 1902, of the land involved.

31-366

197. Under the provision in the act of June 6, 1900, that in case any section 13 or 33, reserved by said act to the Territory and future State of Oklahoma for university and other purposes, was "lost to said Territory by reason of allotment under this act or otherwise," other lands equal to the loss might be located, said Territory is authorized to select lands in lieu of any such section 13 or 33 lost to said reservation by reason of its inclusion within a pasture reserve set aside by the Secretary of the Interior pursuant to article 3 of a treaty between the United States and the Comanche, Kiowa, and Apache Indians, concluded October 6, 1892.

31-362

198. Under the provision of the act of June 6, 1900, relating to the opening to settlement and entry of the ceded Kiowa, Comanche, and Apache lands, authorizing qualified entrymen having lands adjoining the lands ceded, whose entries embrace less than 160 acres, to enter so much of the ceded lands lying contiguous as shall, with the lands already entered, make in the aggregate 160 acres, such entrymen may make extension of their existing entries so as to include portions of sections 13 and 33 within the ceded country, notwithstanding the provision of said act reserving said sections for university, agricultural colleges, normal schools, and public buildings of the Territory and future

State of Oklahoma, and for all lands so lost the Territory must look to the indemnity provisions of its grant. 34-163

199. The "neutral strip" described in the act of June 6, 1900, and the President's proclamation of July 4, 1901, providing for and governing the opening of the Kiowa, Comanche, Apache, and Wichita Indian lands, embraces only lands north of the Washita River, and no portion thereof extends south of that stream.

37-259

200. The lands lying in the bed of the Washita River south of the recognized northern boundary of the Kiowa and Comanche Reservation between two points where said boundary line crosses said river, have not been opened to settlement or entry, either by proclamation or by operation of law. 25-399

201. The provision in the act of June 6, 1900, "that the settlers who located on that part of said lands called and known as the 'neutral strip' shall have preference right for 30 days on the land upon which they have located and improved," applies only to such persons as had made settlements and improvements on said lands and were maintaining the same at the date of said act. 32-190

202. The preference right of entry for 30 days, accorded settlers within the "neutral strip" by the act of June 6, 1900, is not lost by failure to maintain continuity of residence, where the settler continues to claim, exercise domain over, and cultivate the land. 32-588

203. One who at the date of the act of June 6, 1900, was by force and fraud deprived of the possession of a tract within the "neutral strip" upon which he had theretofore settled and made improvements, was nevertheless a settler within the meaning of that act and entitled to the benefits of its provisions. 32-526

204. A contest against a homestead entry within the territory opened under the proclamation of July 4, 1901, on the ground that the entryman, at the date of his registration, was disqualified to make entry because at that time a minor and not the head of a family, will not be sustained where it is shown that he was duly qualified on the date the entry was allowed.

32-403

205. The provision in the circular of July 5, 1901, that any person who "after June 6, 1900, abandoned or relinquished" his homestead entry, should not be qualified to make entry of lands ceded by the Kiowa, Comanche, and Apache Indians and opened to disposition by the act of June 6, 1900, and the proclamation issued thereunder, was intended to apply only to the disposition of conflicting rights arising during the 60-day period, and where a contest against one who relinquished his entry subsequently to June 6, 1900, was not initiated until after the expiration of that period, the contest must be disposed of without reference to said circular.

33-125

206. In determining the qualifications of an applicant to make entry under the act of June 6, 1900, the status of the applicant at the date of his application must control, and if he has at such time attempted to but for any cause failed to secure title in fee to a homestead under existing law, he is qualified to make entry under the provisions of said act.

33-125

207. The term "under existing laws," occurring in the provision of the act of June 6, 1900, "that any person who having attempted to, but for any cause failed to secure title in fee to a homestead under existing laws, * * * shall be qualified to make a homestead entry upon said lands," refers to laws existing at the date of the act, and does not contemplate that said act itself shall be embraced within that term; hence one who made entry under said act, which was subsequently relinquished, is not entitled to make a second entry under said provision.

35-622

208. The act of June 6, 1900, contemplates that but one homestead entry may be made under its provisions by the same person.

35-622

209. Proclamation opening pasture and wood reserve lands in Kiowa, Comanche, and Apache reservations.

35-238

210. Regulations of October 19, 1906, governing opening of pasture and wood reserve lands.

35-239

211. Paragraphs 3, 7, and 14 of regulations of October 19, 1906, amended.

35-347

212. Circular of September 1, 1906, relative to sale of leased lands in pasture reserve No. 3.

35-139

213. Circular of February 21, 1907, amending rule 5 of regulations of September 1, 1906, relating to pasture reserve No. 3.

35-433

214. Instructions of March 19 and April 6, 1908, under act of March 11, 1908, extending time for payment on pasture-reserve lands.

36-310, 311

215. Circular of March 22, 1909, under act of February 18, 1909, extending time for payments on pasture and wood-reserve lands.

37-517

216. Instructions of June 24, 1909, and April 5, 1910, relative to extension of time for payments on Oklahoma pasture lands.

38-50, 545

217. Lands within the Kiowa, Comanche, and Apache pasture reserve, opened to settlement and sale under the provisions of the act of June 5, 1906, are not subject to entry under the mining laws.

35-421

218. The provision in the act of June 28, 1906, granting to persons then in possession of lands in pasture reserve No. 3, under leases, a preference right to purchase the same, has reference only to the original lessee, and can not be extended to include sublessees.

35-398

219. Upon the death of a person who applied for and was awarded Oklahoma pasture lands prior to making entry thereof the right to enter is cast by law upon his widow, who is required to either cultivate or reside upon the land for the requisite period, but need not do both.

35-573

220. Awards made to successful bidders on pasture and wood reserve lands in accordance with the descriptions of the lands given in the bids will not be canceled and the deposits accompanying the bids returned, merely because the bids were made in ignorance of the true character of the lands or because of error in description the lands designated in the bids and awarded thereunder are not the lands intended to be purchased.

35-466

221. The provision in the act of May 2, 1890, for the commutation of homestead entries for townsite purposes, has no ap-

plication to the pasture-reserve lands opened for disposal by the act of June 5, 1906. 36-150

222. Lands in pasture reserve No. 1, opened by the act of June 5, 1906, are not public lands within the meaning of the act of March 3, 1875, granting a right of way "through the public lands of the United States," and are therefore not subject to the operation of that act. 36-1

223. In making proof under section 24, act of May 29, 1908, on homestead entries of pasture-reserve lands in the former Kiowa, Comanche, and Apache Indian reservations, opened under the act of June 5, 1906, credit for constructive residence may be allowed, not exceeding six months, between the date of entry and date of establishment of residence, and the remainder of the 10 months' period of residence fixed by said section need be only of the character exacted in cases of five-year proof, that is, it need not necessarily be strictly continuous. 39-468

224. The provision in section 24, act of May 29, 1908, authorizing commutation of entries of Oklahoma pasture lands made under the act of June 5, 1906, upon payment of all deferred installments of the purchase money and a showing of 10 months' compliance with law, was not repealed by section 25 of the act of June 25, 1910, amending said section 24. 40-324

ONYX.

See MINERAL LAND, 46.

ORAL ARGUMENT.

See PRACTICE, 9-15.

OREGON.

See DONATION, II; STATES AND TERRITORIES, 141; SWAMP LAND, 25, 33, 45-47, 66, 71, 129, 145, 245, 289-290.

OSAGE LAND.

See ALIENATION, VI; CONFIRMATION, 70-71, 94, 164, 181; FILING, IV; FINAL PROOF, XIII; INDIAN LANDS, 343-382; RESIDENCE, V; SETTLEMENT, III.

OTOE AND MISSOURIA LAND.

See CONFIRMATION, 95; INDIAN LANDS, 384-390.

PARKS AND CEMETERIES.

See ALASKAN LANDS, 29; MINING CLAIM, 605; RESERVATION, 322-328, 349, 361-363.

1. Circular of May 23, 1892, under act of September 30, 1890, authorizing incorporated towns to make entry for park and cemetery purposes. 14-560

2. Circular of June 12, 1903, relative to acquiring title to parks and cemeteries on public lands. 32-156

3. Paragraph 1 of circular of June 12, 1903, amended. 32-512

4. General circular of August 7, 1909, relating to townsites, parks, and cemeteries. 38-92

5. Instructions of July 6, 1910, under act of May 11, 1910, creating Glacier National Park. 39-67

6. Instructions of January 10, 1911, relative to mineral or agricultural claims within national parks. 39-442

7. Regulations of October 25, 1910, under act of June 7, 1910, granting lands to certain towns in Colorado. 39-316

8. Land actually in use as a public cemetery is not "vacant" within the meaning of the act of June 4, 1897, and is not subject to selection under that act. 39-383

9. Noncontiguous tracts are not subject to entry under the act of March 1, 1907, for cemetery purposes. 40-74

10. Land used principally as a church site, and only incidentally as a cemetery, is not subject to entry as a cemetery under the act of March 1, 1907; but where used principally and substantially as a whole for cemetery purposes, and only incidentally and secondarily to a minor extent for church purposes, such latter use will not work a forfeiture thereof under said act. 40-74

11. The Land Department will take notice that title to property of the Catholic Church rests in the bishop or archbishop as a corporation sole under the policy of the church, and that such officer has the power and authority to take and hold

land for cemetery purposes for the members of his church. 40-74

PATENT.

See INDIAN LANDS. III: MINING CLAIM. V, XII, XIII; PRIVATE CLAIMS, IV; RAILROAD GRANT, XVII; TOWNSITE. 73-94.

- I. Generally.
- II. Effect of.
- III. Reissue.
- IV. Certification.
- V. Vacation.

I. Generally.

1. Delivery of. Instructions of October 25, 1882. 1-638

2. Should be delivered without fee from the purchaser. Circular of September 14, 1891. 13-498

3. Should not issue for land under a technical subdivisional description not shown by the public surveys. 16-424

4. For all of a fractional section conveys only such land as may be then included within the approved township plat of survey. (See 19-76.) 17-355

5. May issue to a purchaser of railroad lands under section 5, act of March 3, 1887, for less than a legal subdivision, but should contain a recital that it is issued under said act. 16-273

6. Failure to describe therein the lands actually purchased will not leave the lands so omitted subject to the entry of another. 16-69

7. An application for, based on an alleged purchase of a tract will not be granted, where, owing to the war of 1861, there is no official record of the alleged transaction. 20-330

8. Where an act of Congress directs the Secretary to transfer title to public land, without specifically providing by what means the transfer shall be made, patent will issue in the usual manner. 31-348

9. Issued in contravention of the record is void and will not be delivered. 4-498

10. Matters pertaining to execution and delivery, to be determined in the General Land Office. 4-375

11. The Secretary has no authority to direct the delivery of an incomplete. 1-22

12. When signed, sealed, countersigned, and recorded, the entryman is entitled to have it delivered to him, and the department has neither the power to cancel it nor the right to withhold it from him. 21-199

13. The Land Department has power to correct defects or mistakes in the form of a patent so as to make it conform to law. 36-243

14. A protest against the delivery of a, filed by one who alleges an adverse interest in the land, presents no question within the jurisdiction of the department if no equities are shown by the protestant that warrant the department in advising suit to vacate the patent. 27-127

15. Lands involved in a contest or other controversy before the Land Department should not be passed to patent until the defeated party shall have been given notice of the closing of his case, with record evidence of its service, and lapse of reasonable time to seek relief against irregularity or error of such final order. 33-295

16. Where, after decision by the Secretary, a case is erroneously closed, and patent issued to the successful party, during the pendency of a motion for review the institution of suit for the cancellation of such patent will not be recommended unless it appears that the motion is based upon grounds which would have warranted entertainment of the same had it been regularly considered and acted upon prior to the issuance of the patent. 33-295

17. Will not be delivered while the right of possession is in dispute; though if essential in pending litigation it may be delivered in trust for the party legally entitled thereto. 1-287

18. Delivery of, issued on military bounty land warrant to be governed by the rule in *United States v. Schurz*. 1-1

19. To a fictitious person, procured by fraud, carries no title and vests no interest in anyone; it is null and void. 2-794; 5-477

20. Should issue to all the heirs equally where a homesteader dies leaving no widow but both adult and minor heirs. 16-463

21. To issue in the name of minor orphan children of the deceased entryman under the homestead law. 5-222

22. Requirements in case of issue to minor heirs. 1-99

23. Section 2448, R. S., is applicable only where the right to, exists in the entryman at the time of his death. 23-457; 26-242

24. Under section 2448, R. S., may issue in the name of an entryman, though his death may be disclosed by the record. 21-377

25. May issue in the name of heirs where entryman, at time of final proof, was not admitted to citizenship and a naturalized heir thereafter submits final proof. 25-1

26. Will issue in the name of the deceased entryman where the right thereto accrues prior to his death, and in the name of his heirs generally where the right does not accrue until after he has died, or where the entryman at the time of his death is not competent to take title, although the right thereto may have been fully earned. 32-407

27. If a homesteader die before he is entitled to final certificate, his widow may submit final proof and receive patent in her own name; and patent issued in the name of the homesteader, on proof so made, is in violation of law, and no bar to the issuance of patent in the name of the widow. 26-242; 27-671

28. Should issue in the name of the heirs or devisees generally where the death of the homesteader is disclosed by the record. 9-401; 13-228; 17-158

29. Upon the death of a homestead entryman prior to the submission of final proof, leaving no widow, or minor children entitled to claim under section 2292, R. S., patent upon proof subsequently submitted will issue to his heirs generally, unless it appear from the record, prior to the issuance of patent, that the entryman made a will purporting to devise his interest in the entry, in which event patent will issue to his heirs or devisees, leaving it to the local courts to determine who the heirs are and what their interests may be. 40-628

30. Where the Land Department upon the showing in the record then before it properly issued patent to the heirs of a deceased entryman, and it subsequently developed that the entryman had left a will devising the entry, it will not accept a surrender of the patent accompanied by a deed executed by the devisee purporting to reconvey the land to the United States, and issue a new patent to the devisee of the entryman, but will leave it to the local courts to determine who under the patent already issued is entitled to the land. 40-629

31. Under an entry confirmed by section 7, act of March 3, 1891, patent should issue in the name of the entryman, though his death may be disclosed by the record. 24-139

32. Where issued under a grant made by a treaty in which no provision appears for the issuance of, the fact of the grantee's death prior to issuance is immaterial, for if title did not pass without patent, then the issuance thereof was in pursuance of law in the meaning of section 2448, R. S., and the title vested in the heirs, devisees, or assignees of the deceased patentee as if the patent had issued in his lifetime. 26-562

33. In the name of a deceased entryman conveys no title. 9-402

34. Where homestead entry was made by a guardian for the benefit of the orphan child of a deceased soldier, patent must issue to the beneficiary, whether of age or not. 2-114

35. Under a desert entry should issue in the name of the heirs generally where the record shows the death of the entryman. 13-49

36. Must issue to the entryman (pre-emptor) and not to his grantee. 2-779, 783

37. Patent upon a desert entry assigned subsequently to final proof will follow the final certificate and issue in the name of the entryman. 36-193

38. For confirmed private claim in Florida issues to the assignee of the confirmee on production of regular chain of title. 5-677

39. Should issue in the name of the "heirs of" the entryman where final tim-

her culture proof is made by an administrator for the benefit of heirs. 16-149

40. Where the death of a purchaser under the act of June 3, 1878, is disclosed by the record, should issue in the name of the heirs generally. 18-542

41. Upon application by the administrator of a deceased owner (mine), should issue to the heirs of such deceased owner. 2-762

42. The right to patent (mineral) is not traced beyond the entryman (deceased), and issuing in his name inures to the benefit of him whose right may afterwards appear. 2-772

43. Where alien donation claimant died after declaring his intention and before naturalization, patent properly issues to his heirs. 2-439

44. The provisions of the act of June 8, 1880, with respect to the issuance of, in cases where a homesteader has become insane, do not authorize patent if the proof submitted fails to show the citizenship of the entryman. 29-710

45. Authorized by section 2447, R. S., in claims confirmed by statute and where the act made no provision for patent. 6-149

46. Section 2447, R. S., authorizes the issue of, to the assignee of a confirmed claim, where the confirmatory statutes make no provision for the issue of patent. 17-25

47. Title not passed by an instrument purporting to be a, where such instrument is neither sealed nor delivered. 9-407

48. Date of, must be taken as the date of the record, and parol testimony to contradict such record is not admissible. 10-343

49. Boundary description in, not always conclusive as to identity of tract. 5-96

50. Certificate and official survey form a part of. 5-96

51. On entry should contain reservation of acquired railroad right of way and station grounds. 4-523

52. Hearing ordered in case of undeclared, there being a variance between the application and certificate. 4-422

53. The Land Department is prohibited from issuing to a preemptor on a void entry. 2-779

54. Is not necessary to pass title in cases of present grant. 2-492

55. Is not necessary to pass title when patent is not required by the granting act and certification has been made. 2-457, 492

56. Was not necessary to pass title when the lands had been selected under a present grant (to Missouri) and entered at the local office. 2-488, 496

57. In townsite and mineral, mutual clauses of reservation may be inserted. (See 5-256.) 1-556

58. Mineral, should only contain terms of conveyance and recitals showing compliance with the law. 5-195, 256

59. For mineral land should not contain a clause reserving the rights of a townsite. 5-195, 256; 7-283, 319; 8-602

60. Not accepted by a mineral claimant because containing a clause reserving the rights of a townsite, may be recalled with the view of instituting proceedings to determine the relative rights of the parties. 7-319

61. Discovery and location antedating town settlement, the reserving clause will not be inserted in a mineral patent. 4-273

62. If there has been failure to comply with the essential provisions of the law (mining), patent must not issue. 2-741, 743

63. Issue of, for mining claim conclusive as to all facts upon the existence of which such issue depends. 5-28

64. In private claim should follow the terms of the grant or judgment. 1-287; 5-61

65. For private claim may not issue under section 2447, R. S. 1-223

66. For a townsite is inoperative as to all lands known at the time of entry to be valuable for mineral or discovered to be of such character prior to the occupation or improvement of land under the townsite laws. 7-283

67. A patent issued under the general townsite laws, for lands embraced in an unincorporated townsite, is inoperative to convey title to any lands known to be valuable for minerals at the date of the townsite entry, or to any valid mining claim or possession held under the mining laws at the date of such entry. 32-211

68. For lands in the Virginia military district, Ohio, may only issue where the entry is made prior to January 1, 1852, and such lands had not been surveyed prior to said act. 1-4, 11, 17

69. Where a tract has been bought and paid for, and patent withheld through error of the Government, it is the duty of the department on the discovery of such error to issue patent irrespective of the manner in which such matter is brought to its attention. 27-341

70. The right to have a mineral, amended to describe the land actually applied for and purchased, is not defeated by a subsequent adverse location, nor by an entry, based on said location, allowed during pendency of proceedings instituted to secure such amendment. 29-160

71. A patent for land claimed and located for mineral deposits may be obtained only by a person, association, or corporation authorized to locate a mining claim, who has or have claimed and located a piece of land for such purposes, and who has or have complied with the terms of the statute in respect to such location. 33-142

72. The provisions of the act of April 28, 1904, amending section 2327, R. S., relate exclusively to the question of, and are intended to prescribe the rule or guide whereby to determine, the subject matter of mineral patents—that is, the particular tract actually conveyed by any such patent whenever the question may arise. 34-682

73. There is no authority for the insertion, in patents under railroad land grants, of the clause, "excepting all mineral land, should any such be found in the tracts aforesaid"; and in all future railroad land-grant patents said excepting clause will be excluded. 32-342

74. There is no general authority for the issuance of patent to Indian allottees, and in the absence of an express requirement in the agreement of July 7, 1883, between the United States and the Indians of the Columbia and Colville Reservations, and in the act of July 4, 1884, ratifying and confirming the same, that patents shall issue for the lands allotted there-

under, the Land Department is without authority to issue patents for such lands. 32-568

II. Effect of.

75. The title of the United States passes with the patent, and with the title passes all authority or control of the Land Department over the land and over the title which the patent conveys. 2-114; 4-173, 253, 344, 396; 5-483; 6-314; 8-70, 471; 9-83, 597; 10-694

76. Title by patent is title by record; the delivery of the instrument is not necessary to pass title. 1-18, 22, 90; 2-386; 4-345, 500; 8-70

77. Case of United States v. Schurz cited and distinguished. 4-499

78. The record of a perfect, duly enrolled, divests the department of all jurisdiction over the land covered thereby. 22-92

79. Issuance of, duly signed, sealed, countersigned, and recorded deprives the department of further jurisdiction over the land or the title thereto. 10-343

80. Issuance of, deprives the department of jurisdiction over the land included therein, even though by its terms it amounts only to a quitclaim deed. 10-155

81. The department has no jurisdiction over patented lands, not even to direct that a filing therefor be received and held to await the result of proceedings already instituted to vacate the patent. 25-54

82. By the issuance of a patent for the land embraced in an entry the entry becomes merged in the patent and is thereafter nonexistent. 40-630

83. Can be invalidated only by judicial proceedings. 9-83

84. The issuance of, *prima facie* passes title, whether valid or a void instrument without authority, and precludes the exercise of further departmental jurisdiction over the land until vacated by judicial action. 9-114

85. The decisions of the courts and of the department are to the effect that when patent issues the land passes beyond the jurisdiction of the Land Department, but they do not question the latter's right

to determine what public lands have been patented and what remain subject to its jurisdiction. 33-91

86. After patent or certification, where patent is not expressly required the department can not annul such action or dispose of the land. 9-597, 636

87. The issuance of, for lands that were prior thereto part of the public domain is within the general scope of the authority of the officers of the Land Department, though in particular instances their action may be unwarranted. 9-114

88. Issuance of, for land that was part of the public domain or the fee to which was in the United States passes title *prima facie* and, whether void or voidable, while outstanding precludes the further exercise of departmental jurisdiction over the land. (See 27-482.) 16-204

89. Issued within the jurisdiction of the Land Department may be voidable, but is not absolutely void. 3-90

90. Is void on its face not only when fatally defective by its own terms, but also whenever its invalidity appears by reference to any matter of which judicial notice may be taken, such as public statutes or treaties; and such a patent is entirely null, conveys no title, and has no operative effect requiring resort to a court of equity for its avoidance. 27-482

91. Which by its terms discloses the fact of its issue on a Chippewa half-breed scrip location outside of ceded territory is void on its face, an absolute nullity, and does not operate to pass the title to the land covered thereby out of the United States, or deprive the Land Department of jurisdiction over said land. 27-482

92. Misdescription in final certificate and, will not defeat the right of the purchaser to the land actually covered by the sale and purchase or render such land subject to the entry of another. 11-123, 389

93. Issue of, though inadvertent, deprives the department of jurisdiction over the title. 1-457

94. Inadvertently issued and neither delivered nor accepted does not pass legal title to the land or take it out of the category of public lands. 9-322

95. Recording through mistake a purported, will not deprive the department of jurisdiction, where the original instrument is incomplete, not delivered, and based upon an unauthorized entry. 20-247

96. Though fraudulently obtained, segregates the land. 2-116; 5-477

97. Relates back to the initiatory act of the claimant who has duly followed up his rights and cuts off all intervening claims. 1-492;

2-167, 497, 770; 4-117; 5-39; 31-88

98. The right to a patent, once vested, is, for most purposes, equivalent to a patent issued, and when in fact issued relates back to the time when the right became fixed. 31-88

99. The legal title created by the issue of a patent relates back to the inception of the equitable title; and where after the acquisition of equitable title and prior to issue of patent the land is transferred, the legal title, upon issue of the patent, inures to the benefit of the grantee. 32-100

100. Under a railroad grant which provides that "all mineral lands be, and the same are hereby, reserved and excluded from the operation of this act, issued for lands, "excepting and excluding all mineral lands should any such be found to exist," does not reserve to the department the power to subsequently inquire into the character of the lands. 19-410

101. The allowance of an entry, final approval thereof for patenting, and the issue of, thereon, is an adjudication by the Land Department that the lands entered are of the character and class subject to such entry, and necessarily determines that they had not been previously granted or otherwise appropriated. 30-626

102. For private claim exhausts the jurisdiction of the Land Department. 1-229

103. On private claim in California does not affect the rights of third parties. 5-503

104. Issued to purchaser from California (sec. 1, act of July 23, 1866) prevents the State's claim under the swamp grant. 2-613

105. Precludes departmental action under the first section of the act of April 21, 1876. 4-344; 5-145, 205

106. Erroneously issued for land in excess of the amount actually purchased is no bar to the issuance of second to another for such excess. 5-96

107. In which the land is described in accordance with the subdivisions shown on the official plat conveys all the land within the limits so specified, whether the quantity of said land is correctly stated or not. 20-230; 31-272

108. The inadvertent substitution of an adjacent tract in the final certificate and, requires no action for protection of the Government except cancellation of that part of the original entry not covered by the patent. 22-483

109. The Land Department has no jurisdiction to correct an alleged erroneous survey of a patented placer claim, while the, is outstanding, so as to include land not applied for or surveyed. 24-512

110. The inadvertent issuance of a, on an entry in partial conflict with a prior entry deprives the department of further jurisdiction over the tract in controversy; and a final certificate therefor, subsequently issued on the earlier entry, must be canceled, though the original entry on which such certificate rests may be permitted to remain of record. 23-165

111. The department may properly direct cancellation of the record of an incomplete, that was in fact never issued, but was entered of record through mistake. 23-588

112. Issued upon allotment to an Indian deprives the department of jurisdiction to inquire into the rightful ownership of the land. 13-421

113. Where patent in fee to an Indian allottee is not in accordance with the record, but by mistake covers lands not allotted to the patentee, the Land Department has power to recall and cancel the erroneous patent. 36-202

114. Where patent issues in conformity with the record, title passes thereby and the Land Department is thereafter without further jurisdiction over the patent. 36-248

115. Where patent has issued which fails to conform to the record, and has not passed out of the control of the Land Department, it is not only the right but the duty of that department to withhold

the delivery of such patent and to issue one in conformity with the record; but where patent has issued in conformity with the record, and has been signed, sealed, countersigned, and recorded, the Land Department is without further jurisdiction. 36-233

116. After patent has issued the Land Department has no jurisdiction to inquire into and determine the rights of one claiming adversely to the patentee, any proceeding instituted by it after patent being for its own information to determine whether proper ground exists for suit to cancel the patent; and one claiming adversely to the patentee is not entitled to be heard in any such proceeding. 40-623

III. Reissue.

117. Issued to correct mistake on surrender of the former where it fails to properly describe the land. 5-105; 11-123

118. When issued by fraud, accident, or mistake, reconveyance of the land so patented may be made, and a new patent issue to the proper owner. 17-25

119. Where a, includes land not embraced in the entry, a new patent may issue with the correct description, on surrender of the former, accompanied by evidence that the patentee has not sold or encumbered the land erroneously included. 20-376

120. Should be surrendered for reissue to cover larger amount. 5-336

121. May be surrendered and other land taken in satisfaction thereof to correct an error of the Land Department and avoid litigation. 13-715; 14-50, 186

122. The commissioner may, on request of patentee, withhold and cancel a patent that does not describe the land entered, even though a relinquishment of the erroneous patent is not filed. 14-389

123. Portion of land included may be relinquished, and in the place of such land a tract may be taken which through mistake was not included in the original entry or patent. 14-475

124. When issued in conformity with the entire record the department is without authority to accept a surrender thereof for the amendment of the record and re-

issue in accordance with the amended record. 14-534

125. To an Indian under the general allotment act and in accordance with the record passes title, and the department is thereafter without authority to cancel said patent and issue another to correct an alleged error in the name of the patentee. (See 18-283.) 15-74

126. May be recalled by the department, with the consent of the grantee, when not issued in conformity with the judgment and not accepted by the grantee, and another issued in accordance with said judgment. 7-283

127. Where second was accepted all objections not then asserted were held to be waived and delivery of the first refused. 3-146

128. On reconveyance by the State of lands erroneously certified thereto new title may be made under the proper law. 10-165

129. An amended patent may issue without recall of that outstanding where part of the claim is by a clerical error omitted from former certificate and patent. 2-428

130. Where a patentee mistakenly made and placed on record a deed to the United States he may be relieved by indorsement thereon of the commissioner's refusal to accept it, or by reissue with recitals of facts, etc. 2-674

131. The department has no authority to issue new or amended, for the benefit of a transferee to include additional lands shown by a resurvey. 13-392

IV. Certification.

See RAILROAD GRANT, XVII; SCHOOL LAND, 138-143.

132. If patent is not expressly required by law, legal title passes fully by certification. 4-206, 301; 6-543; 8-24, 471; 9-636

133. Certification under the railroad grant of June 3, 1856, equivalent to. 23-310

134. All jurisdiction of the department over lands terminates on certification. 6-543; 30-543

135. Though erroneously made deprives the department of further jurisdiction over the land. 4-137

136. Of an "information list" under a railroad grant does not convey title. 14-333

137. Certification equivalent to, where patent is not required by statute, and the validity thereof can only be questioned in the courts. 11-475; 19-591

138. The certification of lands under a grant that does not require a patent is equivalent to a patent, and the validity of such certification can be questioned only in the courts, subject to the same limitations with respect to the time within which suits may be instituted as govern suits to cancel patents. 37-387

139. Where a land grant to a State does not convey the fee simple title to the lands granted, or require patents to be issued therefor, title does not pass until the approved list of selections of such lands has been certified to the State by the Commissioner of the General Land Office. 33-13

140. Certification under the act of August 3, 1854, is of no effect if the land was in fact excepted from the grant. 23-343, 460

141. The inadvertent certification of State selections at a time when the lands are included within an existing entry, and involved in proceedings then pending before the department, is inoperative, and constitutes no obstacle to the issuance of, in accordance with the final judgment in said proceedings. 24-228

142. By the provisions of section 2449, R. S., the certification of a State selection made under the act of June 16, 1880, of land embraced within the *bona fide* settlement claim of a qualified homesteader at the date of such selection, is wholly inoperative, and does not divest the department of jurisdiction over the land. 26-629

143. The inadvertent certification of a State selection at a time when the land covered thereby is included within an existing entry, made prior to the selection, is inoperative, and constitutes no bar to the issuance of patent on said entry. 26-239

144. The certification of lands as school indemnity, where subject to disposal only under the act of March 2, 1889, is wholly inoperative. 26-347

145. The certification of lands as school indemnity, where previously set apart by

statute for the creation of an Indian fund, is wholly inoperative. 28-358

146. A certification under the act of August 3, 1854, of lands on account of a railroad grant that were, at date of the grant, embraced within a pending *prima facie* valid school indemnity selection, is no bar to the subsequent approval of such selection. 24-364

147. Under the act of August 3, 1854, a certification of lands to a State on account of a railroad grant is no bar to the subsequent disposition of said lands if they in fact lie wholly outside of said grant and hence are not of the character granted. 24-396

148. Certification to the State of Nevada of a tract selected under the grant of June 16, 1880, but of known mineral character and appropriated as such at date of selection, is null and void and no bar to the subsequent recognition of rights asserted under the mining laws. 27-326

149. The erroneous certification to a railroad company of lands not of the character granted, is no bar to the issuance of patent upon subsisting entries of record therefor at the date of such certification. 30-410

V. Vacation.

150. Where a petition is addressed to the General Land Office asking for a suit to set aside a, the matter should be reported to the department with an expression of opinion as to the advisability of ordering a preliminary hearing. 21-125

151. Application for proceedings to vacate should not be considered without due notice to the patentee or his attorney. 16-104

152. Proceedings to vacate will not be advised except on due showing. 9-83; 11-32

153. The United States should not attack its own, duly and regularly issued, without a clear and convincing showing that fraud was committed in procuring its issuance. 21-125

154. To determine whether suit to vacate should be advised, a hearing may be ordered. 9-83; 11-590

155. Where one attacks a patent for fraud with the purpose of entering the

land on vacation thereof he should make a full *prima facie* showing at the hearing, if ordered, at his own expense; if the other party desires to rebut, he may do it at his own expense. 2-761

156. Conceding that one who furnishes evidence on which a, is set aside is equitably entitled to a preferred right of entry, there is no authority for recognizing such equity as the subject of transfer. 29-178

157. Suit to vacate will not be advised on the report of a special agent, when not based on his personal knowledge, unless corroborated by the evidence of at least two witnesses. 6-454

158. Suit to vacate will not be advised in the absence of an equitable adverse right. 6-322

159. Suit to vacate not advised if the applicant therefor has adequate remedy of his own. 4-366; 5-141

160. Suit to set aside not advised, the Government having no interest in the land. 4-366, 373, 557

161. Not attacked by the Government at the request of one who desires to enter the land. 4-396

162. Suit to vacate not advised on the request of one who has himself not complied with the law. 4-320

163. Suit to vacate a void, advised to prevent a public wrong. 4-416

164. Suit to vacate advised if it appears the final proof was false and fraudulent. 6-393

165. Suit to vacate on the ground that it was procured through fraud will not be advised where the evidence is not convincing and the land is in the hands of a purchaser without notice. 10-449

166. Suit to vacate obtained by fraudulent proof will not be advised if the land is held by a transferee, in the absence of evidence that such transferee had knowledge of the character of the proof. 6-395

167. The right to bring a suit in the name of the United States to set aside, exists only when the Government has an interest, or where title has been secured by fraud, or where the Government is under obligation to make the title good. 13-559

168. Suit to vacate a patent will not be advised on the request of a party, where it

does not appear that the Government is under any obligation to him to take such action, or that any rights, legal or equitable, of the applicant have been prejudiced in the disposition of the land.

26-330

169. The right of the Government to begin proceedings for vacation depends upon the same general principles which would authorize a private citizen to apply for relief against an instrument obtained by fraud, or deceit, or any of those practices which are accepted to justify a court in granting relief.

21-179

170. In a case where the United States could successfully maintain a suit for the vacation of a, wrongfully obtained, voluntary reconveyance of the land so patented may be accepted.

29-397

171. For the purpose of enabling the United States, without resort to judicial proceedings, to convey ground by mineral patent, which by mistake has been included in a homestead patent, voluntary reconveyance of the land may be accepted.

29-475

172. Where patent issued on false and fraudulent evidence so introduced as necessarily to affect the judgment of Land Department officials, suit to vacate should be instituted if innocent purchasers have not acquired possession of the property.

2-760

173. The cancellation of a, procured on scrip secured through fraudulent power of attorney and relinquishment, is a matter that must be determined as between the United States and the person procuring such patent and those holding thereunder.

22-42

174. Suit to set aside not advised where the land has been sold by the patentee, though under later rulings the patent would not have issued.

1-377

175. Questions involving the rights of alleged innocent purchasers left to the Department of Justice in advising suit to set aside patent.

4-573

176. Proceedings to vacate will not be advised where title passed under a full knowledge of all the facts, has remained undisturbed for a long term of years, and is now held by purchasers in good faith.

8-165

177. A patent will not be set aside by the courts on the ground of fraud in its issuance if by such fraud the entry is only voidable, not void, and the land has been sold to innocent purchasers without notice of any defect in the title of the patentee.

26-330

178. Suit to vacate advised for the protection of third parties who are otherwise without remedy.

5-28

179. Issued through mistake for lands reserved may be canceled on suit of the United States.

4-321

180. Suit for the recovery of title will be advised where, through inadvertence and mistake, patent is issued in contravention of departmental directions.

24-200

181. Suit to vacate will not be recommended upon allegations already considered and where the Secretary decided the questions involved after full opportunity for adverse interests to be heard, unless upon specific showing of fraud.

2-729

182. An application for suit to set aside a patent, based on a charge of fraud in securing the entry, will not be entertained, where said charge was fully considered by the department prior to the issuance of patent, and the alleged facts on which said charge was made were found not to exist.

26-330

183. The finding of facts on which it issues not to be assailed collaterally.

5-194

184. Or certification where patent is not expressly required, can not be vacated or limited in collateral proceedings.

9-597

185. Judicial proceedings may be properly instituted for the vacation of, issued by inadvertence or mistake during the pendency, on appeal, of a contest involving the land in question.

17-291

186. Proceedings to vacate should be instituted on behalf of the Government, where wrongfully issued through inadvertence during the pendency of a controversy before the Land Department involving the land.

29-58

187. The mere fact that patent was erroneously issued upon a railroad indemnity selection without awaiting the expiration of the period within which an applicant to select the same land under the act of June 4, 1897, was entitled under the Rules of Practice to appeal from the rejection

of such application, will not warrant the institution of suit to vacate the patent, where it appears the patentee is entitled to the land and cancellation of the patent would have to be followed by the issuance of a new patent to the same patentee.

37-670

188. Suit for cancellation will not be advised merely because patent was inadvertently issued; but it must appear that some interest of the Government, or of some party to whom it is under obligation, has suffered by such inadvertent action.

34-298; 40-623

189. Where patent has inadvertently issued, the Land Department, notwithstanding the title has passed out of the Government, has authority to order a hearing between claimants under the patent and persons asserting adverse rights to the land, with a view to determining the advisability or necessity for bringing suit for cancellation of the patent.

34-298

190. Issued for private claim will not be attacked by the Government on the ground that the grant was fraudulent and confirmed through fraud.

4-566

191. Suit to vacate, issued to the Central Pacific, advised where the land was covered by preemption claim at date of withdrawal on general route and definite location.

10-466

192. For mining claim will not be assailed by the Government on the allegation that local regulations were disregarded.

5-131

193. Suit to vacate will not be advised on the application of a claimant under the "armed-occupation" act who does not submit proof within the statutory period, nor until after other disposition of the land.

15-422

194. May be canceled for the same causes that would authorize the cancellation of a certificate.

3-28

195. The rule that the injured party, on discovering the fraud, must give prompt notice of his intention to rescind the deed (patent) is not applicable to the Government, to which laches are not imputable.

2-795

196. Application to enter patented land confers no right upon the applicant to question the validity of the patent by which title passed.

8-24

197. Applicant for land covered by, should initiate his claim by proceedings against the patent.

9-114

198. Resting on conclusive adjudication not disturbed.

5-185

199. The final decree of a court vacating a patent operates to revest title in the United States, but the land does not again become subject to appropriation until restored to entry by the Land Department, and no rights are acquired by the presentation of an application therefor prior to such restoration.

37-115

200. While the legal effect of a final decree of a court of competent jurisdiction canceling a patent issued upon a coal-land entry is to revest title in the Government and restore the land to the public domain, no rights are acquired by the presentation of an application to enter the land until notation of the cancellation upon the records of the local office.

38-597

201. By final decree of cancellation of a patent by a court of competent jurisdiction, the land embraced in the patent becomes part of the public domain, subject to settlement if unappropriated, but does not become subject to entry until opened to entry by proper order of the General Land Office.

40-630

202. Upon vacation of a patent by judicial proceeding it is the final judgment of the court that operates to revest title to the land in the United States and to restore it to the public domain; but it devolves upon the Land Department to determine when and how the land shall again become subject to disposal, and no action looking to disposal thereof should be taken until the finality of the judgment is established.

36-279

PAYMENT.

See ACCOUNTS; FEES; PRACTICE, VI.

1. Public land sold is to be paid for in cash; checks, postal orders, and drafts are not receivable in payment; foreign gold coins as legally valued and national bank notes are receivable; scrip of various kinds, as provided by law, is receivable in lieu of cash.

2-658

2. A check is not a legal payment of fees (timber culture).

2-320

3. An application to enter, accompanied by a worthless check for the fees, confers no right upon the applicant; nor are the local officers bound to take notice of such an application. 21-137

4. Receiver's duplicate receipt is merely *prima facie* proof of payment. 2-48

5. Can not be made by military bounty land warrant if not authorized under the law at date of application. 21-47

6. By military bounty land warrant; act of December 13, 1894, and regulations thereunder. 20-95

7. Military bounty land warrants may not be received in payment of preemptions. 2-673

8. For the purpose of making payment for preemption and commuted homestead entries, supreme court scrip is money. 2-599

9. Failure of local offices to report proof and payment does not defeat rights secured by an entry. 14-349

10. Being made in full for land, the failure of the receiver to account for the money does not defeat the right to a patent. 14-200

11. The failure of a receiver to account for the purchase price of land paid at the time of final proof will not defeat the right of the entryman to receive patent. 26-596

12. Or tender of the purchase money is an essential part of the transaction in cash entries. 13-545

13. On the purchase of public land, must be made when the final proof is submitted. 3-188, 298; 5-220, 221; 6-107

14. Failure to make, at time of submitting final proof will not defeat an entry allowed under regulations which recognize such practice. 6-107; 9-615

15. An actual tender of fees not required of an applicant who applies to enter in the presence of a prior adverse entry. 18-75

16. Tender of, so far as the rights of the claimant are concerned, is equivalent to actual payment. 5-38

17. The Government should not be heard to say that the payment for a tract of land was prematurely made, and not accepted by the receiver in his official capacity, where a suit is afterwards brought by the Government against said receiver

for the recovery of public moneys, and the price of said land is included in the sum sued for, and said suit is compromised on the payment of a stipulated sum. 25-185

18. To the receiver before the local office is ready to act on the application makes the receiver the applicant's agent, and if the application is rejected the applicant must look to the receiver for the return of the money. 6-713; 22-322

19. Of the purchase price of land to the receiver before the acceptance of final proof is at the risk of the purchaser. 23-282

20. Under the departmental regulations governing final proof and payment the entryman is required to make payment at the time of submitting proof, and it is the duty of the receiver to accept the money at such time; and the subsequent failure of said officer to account to the Government for the purchase price of the land so paid will not defeat the right of the entryman to receive patent without further payment. 25-188

21. When money was left on deposit with a former receiver on account of a mining claim, but was not accounted for or covered into the Treasury, his successor in office is not chargeable, nor may it be credited on the entry on account of which it was deposited. 2-673

22. To the register of the purchase price of a tract of land is unauthorized by law, and on the failure of such officer to turn over such money to the receiver or account for the same the Government is not chargeable therewith. 22-133

23. A deposit of money in a Government depository may be accepted as, where a large sum is involved. 14-461

24. Certificates of deposit for the survey of a private land claim can not be used in payment of lands, homesteads, or preemptions. 2-463

25. Of land office fees, which is prerequisite to a preferred right of entry will be presumed (on appeal) where the contrary does not appear. 2-323

26. Of the purchase price of a commuted homestead entry to the clerk of a court, to be forwarded with the final proof, is not authorized by statute and is at the risk of the claimant. 15-64

27. Of the purchase price of a tract of land to a United States commissioner by one who executes his final proof before such officer, is not authorized by law, and is at the risk of the entryman. 21-88

28. Purchase money paid the receiver on declaratory statement for Osage Indian lands is a mere deposit; if proof had been accepted, it would have been received as a first payment on the land; as the filing was canceled and the money has not been accounted for or covered into the Treasury, the case is between the depositor and the receiver. 2-672

29. Deposits for the purchase of public lands should be made with the receiver or the assistant treasurer with whom the receiver deposits, in the purchaser's name, to the credit of the Treasurer of the United States, "on account of sales of public lands." 2-659

30. Where deceased entryman paid the commutation price of the land and the receiver never accounted for it the heirs must again pay said price. (See 14-200.) 2-46

31. Where the excess payment in homestead entry would be less than \$1 none is required. 2-200

32. A showing held sufficient to justify the allowance of an application to change a desert-land entry to a different tract is also sufficient to warrant the transfer of the initial payment therefore made. 21-5

33. Withdrawal of, made under timber entry leaves the applicant without protection as against the intervening claim of another. 16-173

34. For an excess in acreage under a timber-culture entry can not be credited upon a subsequent relinquishment and homestead entry of the land by the same party. 14-569

35. For excess under a timber-culture entry must be made. 14-450; 15-396

36. Money deposited with the receiver, in accordance with official instructions, to pay for the publication of final-proof notice, is payment to such receiver as a public officer; and if the register thereafter causes said publication to be made, his action constitutes an undertaking on the part of the Government to pay for such service to the extent of the deposit made therefor. 27-304

37. For Oklahoma land entered for townsite purposes under section 22, act of May 2, 1890, should be made either in currency or by New York draft, exchange paid. 14-419

38. The joint resolution of September 30, 1890, authorizing an extension of time for, is remedial, and its provisions are applicable on due showing in accordance with the regulations. 15-339

39. Extension of time for, under joint resolution of September 30, 1890, may be allowed a settler who is unable by reason of drought to plant a crop. 16-390

40. A homestead entryman who has complied with the law for a period of five years from date of settlement is entitled to submit final proof, and to an extension of time within which to make, under the act of September 30, 1890, if otherwise within the terms of said act. 29-313

41. A showing made for the purpose of obtaining an extension of time for, may not warrant an allowance of the request, but may be accepted, in connection with the final proof as justifying equitable action in the event of subsequent payment, and the requisite proof of nonalienation. 17-141

42. Time extended for, in case of failure of crops. Circular of October 27, 1890. 11-417

43. Extension of time. Circular of October 18, 1894, under the act of July 26, 1894. 19-305

44. For special circulars extending time for, see also INDIAN LANDS, V.

45. Preemptor not required to wait until near the expiration of filing to apply for extension of time for. 14-509

46. A loss of crops through failure to secure a thrashing machine, authorizes an extension of time for, provided there is no want of diligence on the part of the claimant. 18-52

47. One who applies for an extension of time under the joint resolution of September 30, 1890, must show that the failure of crops is due to reasons for which he is not responsible. 18-525

48. An extension of time for, may be properly granted under the remedial acts of September 30, 1890, and July 26, 1894, where good faith and compliance with law

are apparent, and failure of crops is shown. 20-11

49. The limit of time, under the joint resolution of September 30, 1890, to which an extension may be granted, is one year from the expiration of the statutory life of the filing. 20-85

50. A preemptor who fails to make, within the period granted by an order of extension can not thereafter be permitted to perfect his claim in the presence of an intervening adverse right. 20-85

51. No law for extending the time within which payment may be made in the case of commuted timber-culture proof. 22-210

52. The joint resolution of September 30, 1890, with respect to the extension of time for, is not applicable to a commuted homestead entry. 23-304

53. An extension of time in which to make, on a commuted homestead entry is not authorized by the joint resolution of September 30, 1890, nor by the act of July 26, 1894. 23-467

54. In all applications for extension of time under the joint resolution of September 30, 1890, the cases should be treated as special. 20-323; 21-116

55. Cases involving the question of the right to an extension of time for, should be treated as special. 29-313

56. An extension of time for, may be granted on a showing of failure of crops for which the entryman is not responsible. 20-378

57. On a showing to procure extension of time for, the good faith of the applicant is not impugned by the fact of his having cultivated land other than his own in order to secure means for the purchase of his claim. 20-378

58. Under the joint resolution of September 30, 1890, the right to an extension of time should be accorded, where the claimant is unable to pay for the land on account of any failure of crops for which he is in nowise responsible. 21-116

59. An extension of time may be granted under the remedial provisions of the act of July 26, 1894, to a purchaser under the second clause of section 3, act of September 29, 1890. 22-518

60. The act of July 26, 1894, extended the time on desert entries for making

proof and payment for one year beyond the time at which the same were due, or would thereafter become due under the law as then existing. Said act is not limited to entries alone which were alive at that date, but is also applicable to entries which remained of record at the date of its passage. 23-293

61. The tender of proof and payment is an act that may be invoked by the claimant for his protection, but can not be used by a contestant to defeat the operation of the act of July 26, 1894, extending the time for proof and payment; nor will an intervening contest, resting alone on the charge of failure to make proof and payment within the statutory period, have such effect. 23-248

62. The Land Department is without power to extend the time for payment of the purchase price upon the commutation of a homestead entry beyond the limit of 10 days after notice provided by the act of March 2, 1907; but where an entryman within the purview of the act of August 19, 1911, relieving certain homesteaders from the necessity of residence and cultivation from the date of said act until April 15, 1912, failed to make payment of the commutation purchase price within 10 days after the notice provided for in the earlier act, he may subsequently be permitted to make such payment, without additional proof, where the entire intervening period between the submission of his commutation proof and the time he actually makes payment is covered by the period of exemption granted by the said act of August 19, 1911. 40-510

PHOSPHATE LANDS.

See HOMESTEAD, 136; MINERAL LAND, 38-40; RAILROAD GRANT, 906-908, 1023.

1. Where the land embraced in an application to make soldiers' additional entry is subsequently included in a withdrawal for phosphate reserve, the application will be held in suspension pending final determination as to the character of the land; and, if it be found to contain phosphate, the application, although otherwise valid, will thereupon be rejected, but, if found to be nonphosphate and restored to entry,

the application will then be allowed, unless other reason exists for its rejection.

40-410

PINE LANDS.

See **INDIAN LANDS**, 223-232.

PLAT.

See **FILING**, 1; **SURVEY**, I.

POSSESSION.

See **RAILROAD GRANT**, 484, 539-547, 715-798; **SETTLEMENT**; **STATES AND TERRITORIES**, 45-46.

1. And occupancy of public land for the purpose of working a stone quarry thereon confers no right as against the United States or others having a valid claim under its laws. 11-140

2. Illegal, will not defeat the right of another to make homestead entry of the land. 16-202

3. The illegal occupancy of lands subject to homestead entry only constitutes no bar to such entry thereof by one who asserts a right by virtue of compliance with the law and regulations relating to the entry of such lands. 31-83

4. In the administration of the public-land laws the Land Department should recognize and protect equitable rights acquired through a long-continued occupancy of public land with the knowledge and consent of the Government. 30-611

5. Proof that land is uninhabited is not the equivalent of proof that it is vacant or unoccupied. 31-220

6. The use of uninclosed land for the pasturing of stock, and the exclusion of others therefrom by means of a keeper or herder, constitutes possession thereof. 31-446

POWER SITES.

See **RIGHT OF WAY**, VI; **TIMBER AND STONE ACT**, 58; **WITHDRAWAL**.

1. Instructions of March 6, 1911, under act of June 25, 1910, respecting withdrawals for power sites and other purposes. 39-544

2. A pending unapproved application to make forest lieu selection will not prevent withdrawal of the lands embraced therein

for the purpose of reserving the power sites thereon for public uses. 40-549

3. No such right is acquired by a mere application to locate a soldiers' additional right pending at the date of a power-site withdrawal as entitles the applicant to a hearing to determine whether or not the land is valuable for power-site purposes or is in fact a power site. 40-553

PRACTICE.

See **CERTIORARI**; **CONTEST**; **EVIDENCE**; **JUDGMENT**; **JURISDICTION**; **RES JUDICATA**; **STARE DECISIS**.

I. Generally.

II. Rules of.

III. Amendment.

IV. Appeal.

V. Continuance.

VI. Costs.

VII. Hearing.

VIII. Intervener.

IX. Notice.

X. Proceedings by the Government.

XI. Protestant.

XII. Rehearing.

XIII. Review.

I. Generally.

1. In matters of procedure decisions of the department impart judicial notice equally with the rules of practice. 13-635

2. The General Land Office should follow the rulings of the department in the disposition of cases that fall within such rulings. 11-174

3. Before local offices not affected by State procedure. 4-346

4. Procedure on special agent's report; instructions of August 18, 1899. 29-141

5. The Secretary will not advise as to the disposition of a case pending before the commissioner. 4-309

6. Hypothetical questions not considered by the department. 4-310, 389, 393, 451; 5-258; 9-194; 11-511

7. The Secretary will not pass on the correctness of a decision prepared for the signature of the Commissioner of the General Land Office in a case under consideration in said office. 16-461

8. Record entry of order should not be obliterated on the vacation of the order. 4-385, 554

9. Oral arguments in *ex parte* proceedings before the department not encouraged. 3-561: 6-265

10. Oral hearing not allowed without notice to all parties. 4-320

11. *Ex parte* statements in contest cases should not be filed without service on opposite party. 18-167

12. To hear a case orally is within the discretion of the department. 3-595

13. The granting of an oral argument at any time is entirely in the discretion of the Secretary, and after final judgment has been rendered in a case it will not be granted except upon grounds which warrant a motion for review. 20-122

14. While as a rule the department will permit oral argument in contested cases pending before it when requested by both parties, or upon the application of either where the questions involved may affect the public generally, yet in ordinary cases, where only individual interests are involved and the decision to be rendered will affect only the particular case, the party applying for the oral argument must first obtain the assent of the opposing party before his application will be allowed. 37-479

15. Counsel desiring oral argument in a contested case pending before the department should confer with all parties with a view to agreeing upon a date therefor; and on such agreed date, if consistent with other plans of the department, argument will be heard; but where the parties can not agree upon a date the department will entertain a motion by any party, after notice to all parties, to fix a date, and when such motion comes up the questions whether argument should be allowed, and if so, when, will be settled. 40-151

16. If a case is ready for consideration under the rules, it may be advanced on the docket without notice to either party. 5-675; 27-632

17. A case should not be advanced for consideration unless a denial of such action would result in a public injury or injustice. 17-23

18. Contest cases in which the entry is confirmed by the act of March 3, 1891, may be advanced on written motion and after notice to the adverse party. 12-308

19. Cases involving the question of the right to an extension of time for payment should be treated as special. 29-313

20. Irregularities in proceedings before the General Land Office not indicative of favor or partiality, affecting merely a suspension of action and subsequent resumption of consideration of a case, or refusal to afford an opportunity to be heard orally, are not deemed material where it appears that all parties had ample opportunity to be heard upon the merits, through written or printed briefs, before the suspension, and have been fully heard by printed briefs and in oral arguments before the Secretary upon appeal. 30-161

21. The Secretary in the exercise of his supervisory power as head of the Land Department may, even in the absence of an appeal transfer the consideration of any matter pending before the General Land Office to the department, and, after due opportunity to the parties in interest to be heard, may render decision therein correcting and obviating any errors or irregularities in the proceedings or decision of that office. 30-161

22. While the department may, and in a proper case should, review the proceedings of the General Land Office in respect to the public lands in the absence of an appeal, it will not ordinarily exercise this power upon the application of a party to the proceedings in the absence of a clear and concise designation of the errors complained of by him. 33-39

23. The Land Department has the power to fully investigate any application for title to public land, and an order by the commissioner directing such investigation is ordinarily not appealable, and copy thereof should not be furnished to counsel for applicant. 39-426

24. While long delay in the adjudication of claims under the public-land laws should be avoided, it is more important that the Land Department be fully satisfied of the entire legality of the transaction, and an investigation ordered by the commissioner for that purpose will not be interfered with by the Secretary. 39-427

25. A motion under the rule of April 8, 1891, for the disposition of a case arising under section 7, act of March 3, 1891,

should state facts sufficient to bring the case within the operation of said section.

13-111

26. The rule of April 8, 1891, does not contemplate the advancement of cases in which the question of confirmation had been decided in the General Land Office and appeal taken therefrom.

15-362

27. The rule of April 8, 1891, had reference only to cases then pending before the department.

15-595

28. The advancement of cases in the General Land Office is discretionary with the commissioner.

9-530; 24-202

29. A case involving the reinstatement of an entry can not be advanced for consideration on motion to confirm under section 7, act of March 3, 1891.

16-358

30. The rule of April 8, 1891, providing for the disposition of cases under section 7, act of March 3, 1891, is not applicable to cases ready for disposal in their regular order.

16-336

31. The act of the commissioner in advancing a case or refusing so to do is discretionary, and will not be disturbed in the absence of a clear showing that such discretion has been abused and that a party in interest has been injured thereby.

12-694

32. Briefs containing scurrilous and impertinent matter will be stricken from the files.

9-130; 16-130

33. Brief containing charges of corruption against officers of the Land Department will be stricken from the files.

14-445

34. A brief, with due service of copies, may be properly filed by an attorney, appearing as *amicus curiæ*, for the purpose of presenting views on questions to be decided in a case that will affect the interests of his clients in matters pending before the Land Department.

17-369

35. Papers are not filed when received at the local office during a vacancy in the office of either register or receiver.

14-133

36. Papers presented for filing, but refused by the local office on account of press of business, should be held as filed of the date when presented.

10-139

37. Local officers may, with the approval of the commissioner, designate certain hours of each day in which papers may be filed in their office.

7-504

38. Regulations of local office in the matter of procedure on opening public lands to entry conclusive upon parties taking action thereunder without protest.

14-370

39. A rule of procedure in the local office, adopted to avoid confusion, is conclusive upon parties that take action thereunder without objection.

18-14

40. Objections to the alleged want of regularity in the proceedings before the local office come too late for consideration when raised for the first time on appeal to the department.

25-438

41. Under a rule to show cause why an entry should not be canceled, time should not run against the entryman while the local office is closed.

14-493

42. A vacancy in the office of receiver does not prevent filing an answer under a rule to show cause why an entry should not be canceled; final action, however, on such matter being held in abeyance until the vacancy is filled.

27-547

43. Failure to file a motion in time not cured by notice thereof served within the proper period.

5-262

44. An order of the local office dismissing a contest is not *sua sponte* where such action is not taken until after a motion asking therefor has been filed.

14-91

45. Motion to dismiss a contest before the local office not required to be in writing.

4-207

46. A motion to dismiss filed after the day set for hearing should not be acted upon without notice to the opposite party.

14-91

47. A motion to dismiss should not be entertained when made without notice and not on the day of hearing.

2-220;

5-657; 6-268; 12-453

48. Failure to serve the opposite party with notice of a motion to dismiss an appeal does not deprive the department of authority to dismiss for want of jurisdiction.

16-39

49. Motion to dismiss should not be filed with an officer designated to take testimony, but when so filed and sent up with the record should be considered on the day of hearing.

11-575

50. A motion to dismiss a contest for want of a sufficient charge, in a case where the evidence is taken before a com-

missioner, is in time if made before the local office on the day set for the hearing.

29-351

51. Where the testimony in a contest case is taken elsewhere than before the local officers, and the contestee, after moving to dismiss the contest on the ground of insufficiency of the evidence submitted on behalf of contestant, proceeds to submit testimony on his own behalf, he thereby, notwithstanding the officer before whom the testimony was being taken was without authority to pass upon the motion, waives the benefits of the motion, and is not entitled to have the case remanded for further hearing after final decision by the Land Department that the motion to dismiss was not well taken, but must stand or fall on the record as made.

35-373

52. Right of defendant to rely on order of dismissal.

5-212

53. Where a motion to dismiss has been sustained the entry should not thereafter be canceled on the evidence already submitted without affording the entryman further opportunity to furnish testimony.

6-682; 8-395; 18-78;

20-197; 22-197, 419; 27-62

54. In case a contest is erroneously dismissed upon motion of the entryman, the General Land Office is without authority to reverse such action and then dispose of the case on the evidence theretofore submitted by contestant, without first affording the entryman an opportunity to present his defense.

34-396

55. Where after the conclusion of testimony on behalf of contestant the contest is, on motion, dismissed for want of jurisdiction, without any evidence having been submitted on behalf of the entryman, but is subsequently reinstated without notice to the entryman, no action affecting the entry should be taken in the contest proceeding without affording the entryman an opportunity to submit testimony in his behalf.

37-603

56. If on conclusion of contestant's testimony the contestee move a dismissal, on the ground that the evidence submitted does not warrant a judgment of cancellation, and said motion is overruled, the contestee should be given opportunity to submit evidence in support of the entry.

25-74

57. Motion to dismiss for want of sufficient evidence is in the nature of a motion for a nonsuit and does not deprive the defendant of his right to thereafter submit testimony in the event said motion is denied.

13-40

58. Dismissal of suit on defendant's motion obviates the submission of testimony on his part while such judgment stands.

4-275, 355, 412; 6-364, 682, 758

59. The receiver, acting alone, has no authority to dismiss a contest, and such action can not be validated by a subsequent joint notice thereof from the register and receiver.

23-548

60. A contestee who appears specially for the purpose of filing a motion to dismiss the contest on the ground that the affidavit does not state facts sufficient to warrant cancellation of the entry, and excepts to the action of the local officers in allowing the contestant to amend the affidavit, does not, by subsequently participating in the hearing, waive or forfeit the benefit of said motion and exception.

33-122

61. Objections by contestee to evidence on behalf of contestant on the ground that it is incompetent, irrelevant, and immaterial, are waived by a subsequent motion to dismiss by the contestee on the ground that the evidence submitted by contestant is insufficient to sustain the contest.

40-357

62. Upon denial of a motion to dismiss a contest for want of sufficient evidence to sustain the charge, the entry should not be canceled without affording contestee an opportunity to submit evidence in support of the entry.

40-357

63. The allowance or denial of a motion to dismiss a contest on the ground of insufficiency of the evidence to sustain the charge is a matter resting in the sound discretion of the local officers under all the facts and circumstances of the case.

40-357

64. The local office, in the exercise of a sound discretion, may dismiss a contest for want of diligence in prosecution, but the refusal to make such order on the motion of a stranger to the record is not an abuse of such discretion.

10-91

65. Order of January 17, 1891, fixing the first Monday in each month for the presentation of motions to dismiss on jurisdictional grounds. 12-64

66. A motion to dismiss under the order of January 17, 1891, must be sustained where it appears that the department is without jurisdiction, patent having issued for the land. 14-380

67. A motion to dismiss filed under the rule of January 17, 1891, will not be entertained if it raises a question that calls for an examination of the whole record. 13-173, 507, 733

68. Motion to dismiss will not be entertained by the department where it involves the examination of the record and testimony in a case not reached for action in its regular order. 13-732

69. If a party making a motion to dismiss an appeal desires to have it acted upon independently of the record, he must move for such action under the rule of January 17, 1891, otherwise the department will act on the presumption that such party is satisfied to submit his case on the record as it stands. 22-19

70. Stipulation indefinitely postponing a contest, followed by a delay for years to prosecute the same, must be treated as an abandonment thereof. 6-823

71. Default in appearance after due notice conclusive. 1-465, 475

72. Failure of the contestant to appear on the day to which the case was continued justifies the dismissal thereof. 8-395

73. It is the duty of the local office, on its own motion, to dismiss a contest where the contestant is in default at the day of hearing; but where such a course is not taken, and the contest is subsequently dismissed at the request of the defendant, and then reinstated on due showing and a general appearance filed by the defendant, the irregularity is not material. 17-393

74. Rights of adverse claimant lost through failure to assert the same at the proper time. 3-588

75. Disposition of the record in cases dismissed by the local office for want of prosecution. Circular of January 3, 1890. 10-2

76. Mutual concessions to obviate litigation encouraged. 5-119

77. In case of decision rendered without jurisdiction the irregularity may be corrected by summary proceeding. 5-613

78. Though motion for substitution of parties is denied, the applicant may be allowed the right to be heard in the event of further action taken on the case. 3-111

79. Irregularity in proceedings not considered in the absence of objection. 1-474; 5-454

80. All questions as to preference rights of settlers must be raised in and decided by the local office. 5-659

81. In the disposition of cases before the local office the register and receiver should give the testimony a careful consideration and set forth briefly in their opinion the facts on which their judgment is based. 16-508

82. After decision the local office should transmit the record, and thereafter take no action affecting the disposition of the land until further advised. 6-234; 8-121, 559

83. After decision in a case the local officers are without jurisdiction to enter an order of dismissal on their own motion. 10-678

84. A decision of the commissioner sustaining a motion to dismiss an appeal is interlocutory and does not affirm the decision of the local office or obviate the necessity of a final decision on the merits. 9-633

85. *Ex parte* case returned to commissioner where additional evidence was filed pending appeal from his decision. 4-446

86. Decisions should not be rendered piecemeal. 8-612

87. When an application to file and one to contest are pending on appeal of the same person, both questions should be disposed of by the commissioner's decision. 3-69

88. In the disposition of a case it is competent for the department to consider and determine all questions presented by the record. 12-157

89. Where the rights of several parties are involved in a case the claims of each should be disposed of in the decision of the General Land Office. 8-279

90. To avoid delay the department may determine a case on its merits, if the record is complete and the parties in court,

though the questions presented were not passed upon below. 7-25;

8-595; 9-436; 10-142; 21-26

91. The validity of all rights claimed and set up by adverse parties may be properly determined on final disposition of the case. 12-138

92. The consideration at the same time of several cases that embrace similar questions and the promulgation of one decision covering the several cases does not abridge the right of each party to have his case separately considered. 12-503

93. One who agrees by stipulation to be impleaded in a pending action with "the same force and effect" as if he had originally been made a party thereto can not be heard to subsequently object to the authority of the department to pass on the validity of his claim. 12-138

94. In a case before the Secretary, where there are pending before the commissioner several other appeals involving the right to the same tract, the entire controversy may be disposed of in order to avoid the evils of a multiplicity of suits. 2-59

95. In the trial of a contest case the local officers may, after due notice, personally inspect the land involved. 6-626; 8-38

96. Local officers not authorized to view the land involved after the case is closed and base their judgment on such inspection. 6-626

97. An inspection of the land made by the register without notice and after the case was closed is not the proper basis for a final decision, but may warrant an order for rehearing. 8-38

98. The local officers may personally inspect the land involved in a contest and use their knowledge so acquired to better understand and apply the testimony. 16-95; 24-277

99. There is no statutory provision or departmental regulation authorizing a change of venue in proceedings before a local office. 16-23

100. When witnesses are examined by the local officers their finding of facts where the testimony is conflicting is entitled to special consideration. 4-135;

6-225, 330, 660; 11-409, 442, 490; 16-95

101. On questions of fact the department will not generally disturb concurring

decisions of the local and General Land Office where the evidence is conflicting.

8-440; 9-299, 302, 491; 11-321, 344, 409, 426, 443, 490; 15-300, 499

102. The rule as to the effect of concurring decisions below is not followed by the department in questions of law. 11-426

103. Attorney in good standing, prior to filing appearance, but as preliminary thereto, is entitled to inspect the record and all papers on which action has been taken. 5-490

104. A stranger to the record may not inspect the papers in a case except as attorney. 2-222

105. Record of proceedings in the local office should show with exactness the dates when papers are filed or action taken. 11-117

106. Publication of a departmental decision in the "Land Decisions" is not equivalent to an official promulgation thereof. 12-252

107. Cases not referred to the Attorney General except where the Secretary is in doubt as to the correct conclusion. 5-277

108. Instructions as to the disposition of pending cases on the removal of local office. 7-527

109. The statement and showing required of an applicant to contest by Rules 1 and 2 of Practice are designed to insure good faith on the part of would-be contestants and to prevent the filing and prosecution of speculative contests by those not qualified or who do not intend to acquire title to the lands under appropriate public-land laws, and will not prevent acceptance of an application to contest, tendered by one in all respects qualified, merely because the lands are within a temporary petroleum withdrawal and it is for that reason uncertain whether contestant can make entry thereof in event of the successful termination of the contest. 40-557

110. The provision in rule 2 of the Rules of Practice that an applicant to contest must file a statement under oath setting forth the law under which he intends to acquire title and showing that he is qualified to enter under that law was designed to insure good faith upon the part of would-be contestants and to pre-

vent the filing and prosecution of speculative contests by those not qualified or who do not intend to acquire title to the lands under appropriate public-land laws, but it was not contemplated that it should be construed with the same strictness as though required by some specific provision of law governing contests, and will not be held to prevent the acceptance of an application to contest tendered by one qualified in all respects except as to age, where he is so nearly 21 years old that he will in all reasonable probability attain that age prior to termination of the contest.

40-555

II. Rules of.

See TABLE OF RULES CITED AND CONSTRUED, PART II.

- 111. Rules adopted August 13, 1885. 4-35
- 112. Rules 11, 14, and 17 amended. 26-710
- 113. Rules 17, 44, and 91 amended, and rule 8½ established. 30-622
- 114. Rule 42 modified in Oklahoma townsite cases. 12-186
- 115. Rule 42 amended. 28-301
- 116. Rule 43 amended. 20-487
- 117. Rule 53 amended. 14-250
- 118. Rule 56 amended. 10-689
- 119. Rule 70 amended. 4-234; 17-325
- 120. Rule 70 as amended revoked, and the rule as originally approved restored and adopted. 17-325
- 121. Rule 81 amended. 4-285
- 122. Rule 108 amended. 4-336
- 123. Rule 114 amended. 4-495; 6-796
- 124. Rule 114 construed. 4-314
- 125. Rules intended to be in harmony with general regulations and circular instructions. 5-671
- 126. Revised rules approved December 23, 1896. 23-592
- 127. Revised rules approved January 27, 1899. 29-725
- 128. Revised rules approved July 15, 1901. 31-527
- 129. Revised rules of December 9, 1910. 39-395
- 130. Rule 10 of revised rules of 1910 amended. 39-552

131. Rules 8 and 14 (rules of 1910) amended. 40-496

132. Rules 82 and 83 (rules of 1910) amended. 40-298, 299

133. Are made to aid in the just and equitable disposition of the public lands and may not hinder and delay such disposition. 2-253

134. Departmental regulations in conformity with statutory authority have all the force and effect of law. 2-709;

4-84; 6-111; 9-89, 189, 284, 353

135. Until a rule is changed it has all the force of law, and acts done under it while it is in force must be regarded as legal. 1-165, 416;

3-214; 5-112, 169, 292, 624

136. Rules should be followed, and exceptions to such course only permitted to prevent grievous wrong or correct a palpable error. 5-23, 111, 236; 9-360

137. Rules and regulations do not abridge statutory rights. 2-58,

232, 282; 5-429

138. It is in the power of a court to suspend its own rules or to except a particular case from their operation whenever the purposes of justice require it. 2-720

139. To avoid an act of injustice the department may suspend its regulations. 15-45

140. Rules should not be suspended to the detriment of parties who are entitled to be heard in accordance with the ordinary rules of procedure. 13-280

141. The department may waive questions affecting the regularity of proceedings below. 14-47

142. The waiver of a rule of practice by the commissioner is within his discretion, subject to revision by the department. 3-321

143. Local officers no authority to suspend rules. 6-238

144. Rules of, govern contest between town-lot claimants. 1-502

145. The rules do not provide for or recognize technical dilatory pleas. 13-221

146. The supervisory authority of the Secretary will not be exercised in disregard of the rules where they provide an adequate course of action and are not in conflict with law. 5-111, 236; 8-396

147. On excuse offered for failure to comply with the rules, a definite statement

of the facts relied upon should be made under oath. 12-198

148. None of the rules of practice deprive the department of its supervisory powers. 3-44; 8-2, 423

III. Amendment.

See APPLICATION, II; CONTEST, 131-139, 188-189, 246; DESERT LAND, II, c; ENTRY, V; FILING, II.

149. Instructions of May 18, 1907, relative to procedure in case of withdrawal of application to amend or make second entry. 35-576

150. The liberal policy of the several States in respect to amendments in judicial proceedings will be recognized and adopted by the Land Department in so far as the amendment does not affect rights. 2-39

151. Of a charge in a contest permitted on the general rule observed in the courts, where a substantial remedy is sought and the rights of parties not prejudiced. 18-583

152. Granted where the record furnishes matter to amend by. 4-538

153. Allowed where the rights of parties are not prejudiced thereby. 4-538

154. May be allowed where the charge is defective. 10-181, 497

155. Where affidavit (against timber-culture entry) is executed prematurely, but filed at the proper time, it may be amended. 2-249

156. Motion for review may be amended if no party in interest is injured thereby. 8-248

157. Allowed on the day set for hearing if the charge is found defective. 5-211; 6-268

158. Complaint may be amended after due notice and evidence submitted thereunder. 6-791

159. May be allowed on suggestion of defendant's death. 10-261

160. The right to amend defective pleadings is lost by failure to appeal and can not be set up in a new contest after the interest of another has intervened. 3-58

161. Refusal of local office to allow, is not an abuse of discretion where the amended charge is much more compre-

hensive than the original and the facts set forth were known to the contestant prior to the commencement of the action. 15-305

162. That essentially changes the character of the charge not allowable as the basis of a rehearing. 21-94

163. The right to amend an affidavit of contest should be recognized where no new ground of attack is introduced thereby. 23-285

164. In proceedings against a final entry the local officers have no authority to allow, where the new matter is not related to the original charge. 14-447

165. Of an affidavit of contest relates back to the original if no new charge is made. 19-309

166. Right of, when allowable, not defeated by intervening contest. 23-55

167. When required by decision of the local office, the right to proceed dates from compliance with said decision. 19-453

168. The recognition of the right of, in a contestant, as against the right of a third party to proceed against the entry under attack, is a matter that the contestee is not entitled to call in question, where he has due opportunity to prepare for trial. 22-22

169. When containing new matter and filed after case has closed, must be treated as new contest and held for disposition of pending suit. 6-234

170. Affidavit of contest may be amended subject to intervening rights. 2-210; 7-452

171. Of contest affidavit can not be permitted in the presence of an intervening adverse right. 8-446; 9-18; 10-105

172. In the place of, after judgment, a new contest is allowed. 4-299

173. A motion to dismiss for informalities in the affidavit may be granted or amendment allowed. 2-217, 220

174. That it was not filed within the time allowed is an objection that can not be raised after trial. 10-405

175. Of an application for certiorari, denied for want of formality, can not be allowed. 11-346

176. Allowance of, in contest does not require new service of notice; but the case may be continued in the discretion of the local office. 15-223

IV. Appeal.

- (a) Generally.
- (b) From Local Office.
- (c) From General Land Office.
- (d) By Whom.
- (e) When Allowed.
- (f) Time.
- (g) Specification of Errors.
- (h) Notice of.
- (i) Defective.
- (j) Waiver.

(a) Generally.

177. Rule 43, amended. 20-487
178. Is the proper method of invoking the supervisory authority of the Secretary. 5-613
179. In an appealable case is a waiver of pending motions. 5-438; 6-218; 13-245
180. Rules of Practice must be followed in case of hearing ordered under mineral circular of October 31, 1881. 5-671
181. When a case is returned to the General Land Office, on the request of the appellant, for further consideration of new facts, the appellate jurisdiction of the department terminates and can not again attach except through a subsequent appeal from the final action of the General Land Office. 13-221
182. Withdrawal of, will not prevent the department from considering the record and rendering such judgment as the law and facts require. 12-495
183. Withdrawal of an appeal leaves the decision final. 2-395
184. Where a contest is withdrawn while an appeal to the department by the entryman is pending, and the entryman thereupon and for that reason withdraws his appeal, the matter should thereupon be reconsidered as between the entryman and the Government in the light of conditions then existing. 38-51
185. Where an application to withdraw is made, in view of the provisions of rule 80, for the purpose of removing the obstacles thereby imposed to a consideration of an application for rehearing, and, owing to the fact that the appeal was transmitted to the General Land Office prior to receipt of the application to withdraw at the local office, both the application to withdraw and the application for rehearing come before the General Land Office for consid-

eration, the appeal should not be dismissed on the application to withdraw, but if the application for rehearing be denied, the case should then be considered and decision rendered on the merits. 33-517

186. Withdrawal of, from an order holding an entry for cancellation on the report of a special agent, with opportunity to apply for a hearing, permits said order to become final. 16-259

187. Estops the appellant from denying the full jurisdiction of the appellate tribunal to pass upon the whole record, even though the adverse parties are themselves chargeable with laches. 2-29; 3-562, 608

188. A case that involves the rights of several parties appellant, will be treated as properly before the department on the whole record, though it may be alleged that one of the appellants filed his appeal out of time. 24-565

189. From a decision of the General Land Office brings all questions involved in the record within the jurisdiction of the department. 25-377

190. Right of, should not be denied before it is sought to be exercised. 4-53; 15-187

191. Having been sustained as to order of procedure, the case should be remanded. 5-370

192. Not allowed on the unverified statement of attorney that notice of decision was not received as shown by the record. 6-775

193. Right of, not lost through failure of local officers to give notice of adverse decision. 5-233

194. Not defeated by a mistake in the appellant's name if the subject matter is otherwise clearly identified. 9-545; 18-490

195. Local office may not dismiss, on the ground of its defective character. 5-368

196. Regularly taken should not be dismissed. 11-235

197. Motion to dismiss should be passed upon when the case is reached in order. 5-479

198. Motion to dismiss on the ground of want of authority on the part of appellant's attorney must fail if in response thereto said attorney shows due authority. 9-525

199. Will not be dismissed on the ground that appellant's attorney has been disbarred where there is no official record of such action. 9-520

200. Taken by an attorney not authorized to practice in the Land Department will not be entertained. 22-272, 434

201. In which it is alleged that certain important papers are missing from the record should not be dismissed on motion without allowing the appellant an opportunity to respond to said motion and take action with respect to the missing papers. 12-694

202. Will not be dismissed on the motion of a former attorney of the appellant who at the date of the motion had ceased to represent the appellant. 8-192

203. A motion to dismiss, will not be entertained on behalf of a stranger to the record, nor in the absence of due notice thereof to the appellant. 18-245

204. Filed by attorney who has not furnished authority, as required in circular of July 31, 1885, should not be dismissed without notice under rule 82. 4-569

205. Objection to the sufficiency of, will not be considered if raised for the first time on review. 7-470

206. Validity of affidavit accompanying application to enter not to be raised for the first time on appeal or upon the motion of a stranger to the record. 3-547

207. Objection resting on appellant's allegation and not of record in the proceedings before the local office, but raised for the first time on appeal to the department, will not be considered. 6-654

208. In the absence of, from dismissal of contest before the submission of evidence the entry should not be canceled without further hearing. 4-354

209. Matters pending before the commissioner for his decision will not be considered on appeal to the department. 4-284

210. In appeal to the Secretary questions properly requiring primary action by the commissioner will not be considered. 2-650

211. In all cases of appeals from inferior tribunals over which the General Land Office exercises supervision, a decision should be rendered by that office before

the matter is transmitted to the department. 38-169

212. On appeal or review the department can only consider rights put in issue by the contest and founded upon a live application. 3-104

213. Unperfected, is no bar to a hearing on the subsequent application of the appellant. 8-544

214. Of contestant taken prior to the death of the entryman confers jurisdiction upon the commissioner. 6-779

215. After notice of, the death of the appellee will not defeat the jurisdiction of the department to proceed with the case. 7-500

216. A party to an appeal is a party to the case until it is closed by execution of the decree and may call attention to the manner in which it is executed. 2 523, 595

217. Want of, excused in the absence of written notice of decision. 4-73

218. Failure of party in interest to, from an adverse decision is conclusive as to his rights therein. 3-180; 5-263; 9-569; 11-416, 570; 21-8

219. Rights lost through failure to, can not be set up after the intervention of an adverse claim. 3-105, 473; 4-187, 414, 532

220. If not taken from the rejection of an application to contest an entry, all rights are lost thereunder. 11-179

221. The failure of an applicant for public land to file a formal, from the rejection of his application to enter will not defeat his rights in the premises, where by his subsequent diligence he secures an examination of the record by the General Land Office. 20-550

222. Failure to take, in case of a rejected application to enter, defeats all rights of the applicant. 13-250, 365

223. Failure to, from the rejection of a declaratory statement defeats all rights that might have been secured thereunder by proper diligence. 17-494

224. From the action of the local officers rejecting an application to purchase under the timber and stone act entitles the applicant only to a judgment as to the correctness of such action at the time it was taken. 33-426

225. Failure to take, from an order of dismissal made without jurisdiction will not affect the rights of a contestant.

10-678

226. Failure to, not excused on the plea of want of notice when the record shows notice to the attorney.

5-248

227. Is a waiver of a pending motion to set aside the decision and remand the case to the local office.

13-245

228. An order for a hearing issued by the General Land Office, on the, of an applicant from the rejection of his application to enter, operates as a disposition of the, and its want of regularity is thereafter not material.

24-274

229. The fact that an, is accompanied by a petition for a rehearing, as an alternative remedy, or that such a petition is subsequently filed, is no ground for holding that the appellant has thereby waived any right under his, in the absence of an express waiver.

27-654

230. The appellee is required to serve a copy of all argument filed by him, regardless of whether or not the appellant filed and served any argument in connection with the appeal and specifications of error.

36-230

231. An appeal from the rejection of an application to enter entitles the applicant to judgment only as to the correctness of such action at the time taken and upon the showing made when the application was presented to and passed upon by the local officers, and if properly rejected when presented, it should not thereafter be allowed, upon a supplemental showing filed with the appeal, to the prejudice of an intervening application filed prior to such appeal and supplemental showing.

38-457

232. Where a railroad selection list covering lands embraced in homestead settlement claims was rejected because of such conflicts, and the company appealed generally from that action, without specifying within the time fixed by the Rules of Practice the particular entries it desired to contest, and with intent to prosecute its appeal only as to lands which might subsequently be relieved of conflicting claims, the department will not recognize the appeal as saving any rights in the company, as against a subsequent reservation for forest purposes, in event of cancella-

tion of the conflicting settlement claims as to any of the tracts involved.

39-444

(b) From Local Office.

233. Rule 46, requiring notice of, is mandatory and has all the force and effect of law.

12-199

234. Amended rule 70 revoked and original rule adopted.

17-325

235. Rules regulating, from the General Land Office not applicable to cases before local office.

1-472

236. Papers to be retained in local office for 30 days after notice of decision and report then made whether appeal has been taken.

2-205; 3-38; 4-203

237. From the local office not requisite to the jurisdiction of the commissioner.

1-455

238. During the pendency of, no action should be taken in the local office affecting the disposal of the land until instructed by the commissioner.

4-215, 242, 395;

5-227; 7-140; 9-59, 281, 299, 326, 578

239. During the pendency of, from action of the local office it has no jurisdiction over the case or land involved therein.

8-559

240. During the pendency of, the local office has no authority to allow contest proceedings against the lands involved.

23-448

241. From a decision of the local office operates to divest said office of its jurisdiction in the case; and the withdrawal of appeal on the part of one of the appellants therein will not reinvest said office with jurisdiction.

25-76

242. Rule 53 amended so as to permit the submission of final proof during the pendency of a contest.

14-250

243. Disposition of land released by relinquishment during the pendency of, must be governed by the act of May 14, 1880, and not by rule 53.

13-590

244. No action should be taken by the local office pending appeal from its decision rejecting the testimony of one of the parties.

6-440

245. Pendency of, precludes the allowance of an entry for the land involved.

2-270; 10-15

246. Dismissal of contest by the local officers while the case is pending on appeal is error. 2-245

247. The publication of notices of right of appeal in contested cases before local officers discontinued. 3-99

248. Notice as to right of, must be given under rule 66 when an application to file or enter is rejected. 5-377

249. Failure to, from rejection of application to enter does not defeat the right of the applicant if he is not given the requisite notice in writing of the adverse action. 16-111

250. Failure to appeal from the rejection of an application does not impair the claim of the applicant if he is not informed of the right of appeal. 11-191

251. Applicant for land should be informed as to the right of, if his application is rejected. 12-235, 684

252. In the absence of, the decision of the local office is final as to the facts and will not be disturbed by the commissioner except under rule 48. 1-467;
5-585; 8-30; 11-300;
13-686; 14-230; 18-409

253. In the absence of, the decision of the local office is final as to the facts unless the case is within one of the exceptions to rule 48, though a different conclusion might have been reached had appeal been taken. 7-98

254. Failure to appeal from the local officers' decision renders their action final as to the facts so far as the parties are concerned, subject to certain exceptions, but the General Land Office is not thereby precluded from passing on the evidence when the interests of the Government require such action. 7-20;
11-396, 407; 15-37

255. In the absence of, the commissioner should correct errors in the decision of the local office where said decision is not consistent with the findings of fact by said office. 13-436

256. In the absence of, the commissioner may decide a case on its merits where there were disagreeing decisions of the local officers. 9-438

257. Failure to, from a decision of the local office will not preclude the General

Land Office from an examination of a case, where fraud or gross irregularity is suggested on the face of the papers. 20-516

258. A decision of the local office that the proof offered does not sustain the charge is a finding that becomes final as to the contestant in the absence of. 6-359

259. Absence of, from the adverse decision of the local office leaves the case to be determined as between the Government and the party successful below. 21-294

260. In the absence of, from the decision of the local office dismissing a contest the case should be considered as between the claimant and the Government. 6-359, 427

261. The second exception to rule 48 is only applicable as to rights between the claimant and the Government. 5-624

262. Where a decision of the local officers is contrary to existing laws or regulations the commissioner may consider the case on its merits and reverse the ruling of said officers, though the appeal does not ask for such action. 18-431

263. In the absence of, the commissioner should, under the second exception to rule 48, reverse a decision of the local office rendered contrary to law. 6-331

264. Failure to, under rule 48 may be conclusive as against parties, but does not preclude examination of the case by the General Land Office. 5-245, 603, 624

265. In the absence of service on the opposite party of notice of, from the local office the commissioner is without authority to reverse the decision below except under rule 48. 18-594

266. The decision of the local office becomes final as to the facts if notice of, is not served on the opposite party as required by rule 46, and in such case no appeal will lie from the decision of the commissioner affirming the action below. 18-153

267. To justify the finality as to the facts, provided for under rule 48, the findings of the local officers must be positive and unequivocal, not argumentative or presumptive. 22-6

268. The finding of facts by the local office should not be held final under rule 48 if based on matters not properly at issue under the law. 22-67

269. Whether taken or not from the decision of the local office, the commissioner should determine matters of law involved.

5-625

270. In the absence of, the Commissioner of the General Land Office should examine into the merits of the case where the decision of the local office is against the Government.

6-98, 250

271. Withdrawal of, from the action of the local office leaves its decision final as to the facts the same as though no appeal had been taken.

15-290

272. Where an appeal from the local office is dismissed as insufficient the decision below should not be disturbed except under rule 48.

15-400; 20-41

273. The right of, from the General Land Office is properly denied where the appeal from the local office is dismissed for the want of specification of error.

13-91

274. In a case decided by the local office where one of the parties affected adversely fails to, but another party thereto does, the whole case comes before the General Land Office for disposition on its merits, and not under rule 48.

23-562

275. On the withdrawal of, from the local office the General Land Office may properly take jurisdiction of the case, under rule 48, if the irregularities therein call for such action.

18-306

276. Unless case falls within rule 47 (rules of 1880), the commissioner should not, in the absence of appeal, disturb the decision of the local office.

3-184

277. Case confirmed under rule 47 (rules of 1880) not considered on appeal, except for jurisdictional cause.

4-571

278. In the absence of, the refusal of the contestee to answer proper questions on cross-examination is such an irregularity as to warrant the General Land Office in a reexamination of the case under rule 48.

5-599

279. Though not filed in time, the case under rules 48 and 49 may be reviewed.

5-212

280. Failure to appeal from decision of local office defeats the right of appeal from the commissioner's decision affirming the action below.

5-624;

6-804; 7-358; 20-396

281. In the absence of, taken in time from a decision of the local office, or valid excuse for such default, there is no right of, to the department if said decision is affirmed by the Commissioner of the General Land Office.

20-375

282. Where, from the local office is properly dismissed for want of compliance with the Rules of Practice the case must be regarded as though no appeal had been filed, and therefore none can be considered from the action of the General Land Office affirming the decision below.

21-553

283. Rule 48 should be construed with rule 81 as amended.

5-624

284. Failure to appeal from decision of local office held to be a waiver of claim.

3-184

285. Right of, from commissioner lost through failure to appeal below when the case was properly disposed of under rule 47 (rules of 1880).

4-277

286. Failure of the contestant to take, from a decision of the local office dismissing his contest will not preclude a subsequent assertion of his right thereunder if the record does not affirmatively show due notice of such action.

8-595

287. Failure to, from the decision of the local office on question of fact precludes right of appeal to the department where the action below is approved; but if said action is disapproved the right of appeal exists in case of subsequent adverse action in the General Land Office.

15-187

288. Failure of a State to appeal from a decision of the local office on a question under the swamp grant will not defeat its right to appeal from the commissioner's decision therein.

8-64; 13-341

289. Validity of, from the local office will not be considered by the department where the case is submitted on its merits to the General Land Office and without objection to its jurisdiction.

11-630; 13-598

290. Right of, from the final decision of the local office should not be abridged on the plea that such action is necessary for the protection of selections that must be located within a limited period where such selections are made with full knowledge of prior adverse claims.

13-277

(c) From the General Land Office.

291. Orders of January 29, 1896, and June 11, 1896, for the transmission of certain, as "current business." 22-120, 675

292. Allowed from orders of the General Land Office granting or rejecting applications to contest, or applications for hearings, shall be promptly forwarded to the department as current business. 21-540

293. Estops the appellant from denying the jurisdiction of the department.

2-29; 3-562, 608

294. The jurisdiction of the commissioner over a case ceases on appeal from his final decision.

3-111; 5-205.

224, 438, 504; 6-108, 315;

9-165; 11-140, 409; 12-80

295. The General Land Office, after an appeal from its decision in a case, is without authority therein to grant an extension of time for filing argument, or otherwise modify the Rules of Practice with respect to the proceedings on appeal.

29-140

296. The filing of, does not operate to remove a case from the commissioner's jurisdiction in cases where he holds that the right of appeal does not exist.

10-572

297. Is not received as such in cases where the commissioner holds that the right of appeal does not exist.

10-572

298. Right of, from the General Land Office should not be denied until an attempt is made to exercise the same.

4-53; 15-187

299. From the commissioner's decision removes the case from the jurisdiction of the General Land Office, and no authority exists thereafter in said office to consider a motion to dismiss said appeal.

12-390, 422

300. After the allowance of, the commissioner has no jurisdiction to entertain a motion to dismiss the same.

5-205;

13-507

301. The Commissioner of the General Land Office has no jurisdiction to consider a motion to dismiss an appeal from his office.

12-647

302. The General Land Office has no jurisdiction to dismiss an appeal from its action when received and noted of record.

16-125

303. Accepted by the General Land Office terminates its jurisdiction over the case, and it does not subsequently acquire jurisdiction on the withdrawal of such appeal in the absence of departmental action thereon.

12-495

304. When withdrawn by the appellant prior to the transmission of the record to the department, the commissioner may dismiss said appeal, and close the case as though no appeal had been taken.

18-434

305. Sufficiency of, from the General Land Office to be determined by the department.

5-251

306. In all cases where held defective by the General Land Office the case should be transmitted to the department and the letter of transmittal should specifically designate wherein the appeal is defective.

11-48

307. On appeal to the Secretary cases involving the same principle, but concerning different parties and tracts, should be transmitted separately.

2-29, 215;

3-166, 349, 445; 10-472; 14-271; 31-258

308. Cases arising between different parties and involving different tracts of land should not be considered together, and so transmitted to the department on.

25-420

309. In the transmission of, to the department the record should show whether the land is "offered" or "unoffered."

10-684

310. Papers were properly not transmitted on, where the case had been considered by the department on review.

4-227

311. From the commissioner's action in rejecting an application to contest an entry must be perfected under rule 86.

7-423

312. Applications for extending the time for perfecting an appeal from the General Land Office should be addressed to that office within the time for appeal, with the reasons assigned duly verified by oath.

3-59

313. Neither the local officers nor surveyors general may fix the time for an appeal from the decision of the General Land Office, nor extend the time fixed by the rules.

3-59

314. One who does not, but files a motion for review out of time, can not be

heard to complain if the department holds the decision below final. 16-60

315. The Rules of Practice, in fixing the time within which an appeal may be filed from a decision of the General Land Office, make no provision for excluding the time during which a motion for rereview of such decision is pending. 29-646

316. In the absence of, and no reason shown therefor, the department will not undertake to review a decision of the General Land Office. 11-101

317. In the absence of, the commissioner's decision becomes final, and he is thereafter without jurisdiction to modify his action therein. 14-574

318. Rule 48 is not applicable to decisions rendered by the General Land Office. 12-421

319. An appellant from decision of the General Land Office is entitled to have all the record on which action was taken transmitted to the department. 13-140

320. In forwarding a case to the department all papers in connection with the entry should be transmitted therewith. 17-545

321. When taken, the General Land Office is not required to notify the parties that the record has been sent to the department. 16-60

(d) By Whom.

See MINING CLAIM, IX.

322. Party recognized by notice of decision entitled to be heard on appeal. 4-53

323. A stranger to the record is not entitled to complain of a decision, or to be heard on, before the department. 21-95

324. By one not a party to the record will not be entertained in the absence of due showing as to the nature of the interest claimed by the intervening appellant. 11-499

325. The right to intervene and be heard on, may be properly accorded a protestant who shows an interest in the subject matter of a contest. 23-12

326. Right of, can not be exercised by one who is not a party in interest. 2-362; 12-538; 13-673; 16-397

327. Protestant without interest is not entitled to right of. 12-345

328. Right accorded to one who prefers charges against an entry, furnishes evidence, and pays the cost of his own testimony, even though he formally waive the preference right of a successful contestant. 13-722

329. Right may be accorded a protestant against preemption proof who desires to clear the record so that he may enter the land. 13-507

330. Right allowed to parties shown to be in interest and affected by the decision. 1-579

331. Mortgagee or purchaser after entry entitled to be heard on disclosure of interest. 4-544, 570; 6-771

332. Of intervenor requires a disclosure of interest; and the right is properly denied where it is sought to be exercised by one who is not a party to the pending controversy, and discloses no right to be heard as an intervenor. 10-111; 17-298

333. Of a stranger to the record should be disposed of under rule 82 if the appellant fails to show his right to be heard as an intervenor. 7-454, 9-482

334. The unsworn statement of a stranger to the record is not sufficient to show right of. 7-480

335. Taken in the name of the heirs of the entryman is defective in the absence of proof showing the death of the entryman, the names of the heirs, and the parties taking said appeal. 9-249; 13-322

336. Right should be accorded the heirs of a deceased preemptor from a decision awarding the land to an adverse claimant. 8-405

337. Can not be taken by attorney of claimant after such party has filed a relinquishment of his claim. 21-95

338. By attorney on behalf of deceased client without effect. 11-604

339. Where two parties are adversely affected by a decision the appeal of one will not preclude motion for a review by the other, nor will the denial of the motion affect the appeal. 5-410

340. Where a decision of the General Land Office is adverse to both parties and one appeals, and the other moves for review, and both actions are regularly taken,

the commissioner may properly consider the motion for review. 18-575

341. An appeal by one of the parties adversely affected by a decision of the commissioner in a case where the interest of each is separate and distinct from the others, brings the record up only for determination of the rights of the appellant upon the issues presented by the appeal; and parties who fail to appeal in time can not, as a matter of right, insist upon further recognition of their claims, but by such failure to appeal are deemed to have acquiesced in the decision and their claims will be considered as eliminated from the controversy. 39-498

342. An attorney who advances money for the prosecution of a contest is not entitled to the right of, if the suit is dismissed. 11-65

343. Is not required for the protection of a contestant where the local office held the contest speculative, but the commissioner cancels the entry without passing on contestant's status. 15-445

344. The Government does not take, in case of adverse action of local office in proceedings directed by the Land Department. 13-603

345. Not necessary for protection of the Government in proceedings directed before the local office and where there is no adverse claimant. 13-603

346. From adverse action on homestead entry must be taken by or on behalf of the actual successor in interest in case of the entryman's death. 16-177

347. Taken in the name of a deceased entryman without authority from the administrator may be considered on behalf of a transferee. 13-60; 16-484

348. Where in a contest a judgment of the General Land Office awards one of the parties the right to elect as between two tracts, an adverse party who is asserting a claim to one of such tracts is entitled to be heard on, from such judgment. 21-234

349. Where there are several independent contestants, without any community of interest, each asserting a separate, distinct, and individual right of contest against a different tract embraced in the ing invalidity of the common base upon same forest lieu selection, and all charg-

which the selection as to all the tracts rests, they are not entitled to unite in a joint appeal from rejection of their several applications to contest, but each should file a separate and distinct appeal. 40-197

(e) When allowed.

350. Will lie from action that involves the commissioner's jurisdiction in the disposition of public lands. 13-259

351. Right exists where the decision of the Land Office amounts to a final determination on the merits of the case. 4-570; 6-124

353. Will lie from decision of the General Land Office upon the merits of a case, though irregularly considered. 4-430

354. A decision finally disposing of a question, though not of a case in which it is raised, is not interlocutory, and is therefore subject to appeal. 2-374

355. Not allowed from discretionary action of the commissioner. 4-162, 269; 13-706

356. A motion to dismiss an, taken from an action lying within the discretion of the commissioner will not be considered where the appeal has been duly allowed and the case presents a new question for departmental adjudication. 23-293

357. Will not lie from a refusal of the commissioner to extend the public surveys over a tract of land. 21-454

358. Will not lie from an interlocutory order of the commissioner. 2-40,

580; 4-94; 7-404; 9-360, 633; 12-63, 495; 14-496

359. Will not lie from a decision of the commissioner holding that an affidavit of contest is sufficient and ordering a hearing thereon, as such ruling is interlocutory in character. 13-347

360. Orders of the General Land Office made on the submission of annual desert-land proof are interlocutory in character, and no, will lie therefrom. 20-111; 24-306

361. A decision of the commissioner denying a motion to confirm an entry under section 7, act of March 3, 1891, is not final, nor will appeal lie therefrom. 13-462

362. Will lie from action of the commissioner on a case returned for disposition under section 7, act of March 3, 1891, in

accordance with the instructions of May 8, 1891. 15-598

363. Will not lie from an interlocutory order of the local office. 9-252; 11-84; 24-88

364. Will not lie from an order of the commissioner directing a hearing on an informal protest against final proof. 15-41

365. Will not lie from an order of the commissioner directing a hearing. 2-40; 3-325, 530; 6-124; 8-372, 444; 9-217

366. Will not lie from an order of the local office directing a rehearing in a case on which final action has not been taken by said officer; nor from the commissioner's decision denying the right of appeal from the local office. 21-122

367. Will lie from the commissioner's refusal to order a hearing. 15-290

368. Will lie from refusal to order a hearing on new facts set up in support of a motion for review. 21-130

369. Will lie from a refusal to order a hearing, and the right of appeal is not dependent upon an express declaration in the decision that such right will be recognized. 13-478

370. Will not lie from a decision of the commissioner refusing to order a hearing unless such refusal amounts to the denial of a right. 3-516, 562; 5-23; 6-124; 9-377; 10-572

371. Will lie from decision holding the evidence insufficient to warrant cancellation and directing new hearing. 5-58

372. Will lie from an order of the local office dismissing a contest for want of prosecution and refusing to reinstate the same on due showing. 12-525

373. Will properly lie from a decision dismissing a petition for the reinstatement of an entry and a rehearing thereon. 13-520

374. A decision that amounts to the determination of a substantial right is not interlocutory and appeal will lie therefrom. 10-111

375. Will lie from the absolute denial of an application to contest an entry. 15-243, 352

376. The rejection of an affidavit of contest by the local office is a final action on its part from which, will lie; and failure of the applicant to appeal in time should not operate to defeat his right to a hear-

ing, if not duly notified of his right of appeal. 28-315

377. Will lie from a decision of the General Land Office holding a notice of contest insufficient and directing further proceedings or, in default thereof, dismissal. 15-83

378. Will lie from a decision canceling an entry when there has been no order holding said entry for cancellation and where notice of a prior rule to show cause, etc., does not affirmatively appear of record. 15-367

379. From a decision holding an entry for cancellation on the report of a special agent, subject to the right of the entryman to apply for a hearing, will be taken as an admission of the facts as found below, on which final judgment may be properly rendered by the department. 22-433

380. May be allowed where an entry is held for cancellation on the report of a special agent, subject to the right of the entryman to apply for a hearing to show cause why his entry should be sustained, and the entryman declines to apply for a hearing. 8-306; 20-463

381. Will not lie from the commissioner's requirements of an additional affidavit in support of an entry; only from final action on the case on the failure of the entryman to comply with said requirement. 5-429; 7-67, 480; 8-73; 10-110

382. Lies from a decision which in effect is a rejection of final proof. 5-421; 6-605

383. Will not lie from the refusal of the commissioner to review a decision. 5-99, 410; 10-159

384. Should be from the original decision and not from the refusal to reconsider such decision. 9-388; 11-260

385. Will probably lie from the denial of an application to have an entry referred to the board of equitable adjudication. 20-144

386. Should be allowed from a decision canceling an entry on a special agent's report when the facts as shown therein are not denied. 8-306

387. Under a decision of the commissioner holding an entry for cancellation, with the right to submit supplemental proof, the entryman may refuse to furnish

such proof, and, standing on his case as made, appeal to the department. 13-211

388. Under a rule to show cause why an entry should not be canceled the entryman may either comply with the order or stand on the record and appeal to the department. 26-54

389. Will lie from a judgment rendered on refusal to plead when demurrer to the charge is overruled. 13-348

390. Reinstatement of contest having been denied by the local office, the right thereto may be tested on appeal. 4-513

391. Will not lie from the response of the commissioner to a letter of inquiry. 6-772

392. Allowed in lieu of certiorari where the appeal was wrongfully denied. 4-52, 333

393. Will not lie from a letter of the commissioner promulgating a departmental decision. 9-93; 15-190

394. Will not lie from the action of the commissioner in canceling an entry under directions issued in a departmental decision that has become final. 23-478

395. Will not lie from the refusal of the commissioner to take up a case before reached in the regular order of business. 9-530

396. Will lie from the rejection of adverse mineral claim. 13-718

397. Will lie from a requirement of new publication of mineral application. 14-697

398. Will lie from a decision requiring a mineral entryman to make new publication of notice. 14-697

399. The acceptance of a mineral application filed upon a homestead entry against rules impairs the entry and justifies appeal. 2-713

400. A return of an application with explanation that the deposit for fees and commissions is insufficient, which is not denied, is not a decision justifying an appeal. 2-279

401. Appeal will lie from the decision of the local office on the sufficiency of residence under the act of August 11, 1876. 3-367

402. Where the law directs the surveyor general to report in relation to private claims to Congress, appeal to the Land Department will not lie. 2-413

403. Does not lie from action of board of equitable adjudication. 1-411

404. Will lie from action of Oklahoma townsite trustees though not provided for by statute. 13-9

405. Will not lie from commissioner's refusal to allow an application for the survey of a specific tract. 16-513

406. Not the proper means of presenting new questions. 8-294

407. A decision of the General Land Office that a railroad company has no claim to certain land does not preclude the right of appeal from such action. 4-52

(f) Time.

408. Right of, runs from date of notice of decision. 4-244, 279

409. In computing the time within which, must be filed, the day of service of notice of decision must be excluded. 25-488

410. Time allowed for, from the rejection of an application is limited by notice of such action, and not by the action itself. 13-598

411. The time within which to file, does not begin to run until notice of the decision is duly served. 13-225; 15-249

412. Circular of April 3, 1907, relative to time for appeal where notice of decision is given by mail. 35-492

413. Seventy days allowed for filing, when notice of commissioner's decision is given through mails by local office. 1-110; 5-475, 479

414. Ten additional days allowed for, when notice of the decision is given through the mails by the local office. 2-714; 8-46; 9-438

415. Ten days additional allowed for filing when notice of decision is given through the mail by the local office, irrespective of the time actually required for transmission of the notice. 13-136, 501

416. When notice of a decision is given through the mails by the local office, 10 days additional are allowed within which to file, without regard to the date when the appellant actually receives said notice. 19-478

417. Ten days additional allowed for, when notice of the decision is given by the local office through the mail, may be accorded the appellant whether he uses the

mail for transmitting his appeal to the local office or files it in person. 18-212

418. Ten days additional allowed for, when notice of local officer's decision is sent through the mail. 1-117, 118; 7-387; 12-62; 14-352

419. From the General Land Office will not be entertained if not filed within the time required. 4-331; 9-291, 360

420. In computing the time allowed for, the period between the filing of a motion for review and the notice of decision thereon is excluded. 3-539; 8-421

421. Rules 79 and 87 are applicable to proceedings before the local office as well as in cases before the General Land Office and the department. 12-62

422. In computing the time allowed for, the period covered by an intervening motion for review should be excluded. 12-62, 647

423. Rule 79 is not applicable except where the motion for review is filed within the time allowed for appeal. 14-154

424. The provisions of rule 79 can only be invoked on behalf of a litigant who has himself filed a motion for review. (See 26-639.) 19-294

425. A motion for review of a commissioner's decision that adversely affects both parties, filed in time by one of said parties, operates to suspend all action under said decision until the disposition of said motion, and during such period of suspension neither of the parties is required to appeal. 26-639

426. The time for taking, not suspended by a motion for rehearing filed out of time. 14-67

427. Time allowed for, not suspended by a motion for review filed out of time. 17-68

428. In computing the time allowed for, the period covered by an intervening motion for review should be excluded, and this rule is not affected by a withdrawal of said motion before decision thereon. 13-192

429. In computing the time allowed for, where a motion for review has intervened, the appellant is entitled to the additional 10 days allowed, independently of the same period given for filing the review, where notices of the commissioner's action

in each case are sent through the mails by the local office. 20-535

430. Withdrawal of, after the expiration of the time allowed for taking the same, and filing a motion for review, does not revive the right of appeal if the review should be denied. 12-105

431. In the absence of, within time allowed the commissioner's decision becomes final. 6-6

432. Must be dismissed on motion of appellee if not filed in time. 6-240

433. Rule limiting the time allowed for, will in contest cases be strictly enforced. 9-668

434. Failure to file, within the prescribed period warrants an order of dismissal. 13-697; 25-323

435. If not taken in time, the department is without jurisdiction to entertain the same. 12-419; 25-34

436. Where taken after the time allowed acknowledgment of service by opposing counsel does not cure the defect or waive right to have the appeal dismissed. 6-800

437. The acceptance of service of notice of, without objection, does not waive the right of appellee to be subsequently heard on a motion to dismiss said appeal on the ground that it was not taken in time. 18-151

438. Failure to file, in time not excused on the ground of want of notice if in fact the attorney of appellant had such notice. 9-170

439. The General Land Office may reject if not filed in time. 5-205

440. Failure of the commissioner to return under rule 82 an appeal defective for want of notice does not relieve the department from the necessity of dismissing the same on account of said defect if the time allowed for appeal and notice has expired. 11-375

441. It is no excuse for failure to file in time to show that appellant's attorney was misled as to the time by a notation on the record in the local office where said attorney accepts service of notice and gives his receipt therefor. 13-697

442. Failure to, in time not excused on the ground that in the notice of the decision the period accorded for appeal was erroneously stated as 30 instead of 60

days, where the appellant has had the benefit of the full period, and the adverse party takes no advantage through said error. 23-106

443. Failure to appeal in time from the action of the local office does not cut off right to appeal from the commissioner's decision. 3-606

444. Will not be held out of time where the delay therein is due to the negligence of the local office. 20-535; 21-542

445. Will not be dismissed on the ground that it was not taken in time if the record fails to show when notice of the decision was received. 3-73; 9-455

446. Will not be dismissed because filed out of time if the notice of the decision did not contain a copy of the same and the appeal was taken within the required time from the receipt of such copy. 16-187; 18-192

447. An appeal not filed in time may be considered where the interests of the Government are involved or where justice is facilitated and promoted. 2-714, 720

448. The acceptance of, filed out of time, and consideration thereof with other appeals involving the same land, by ordering a hearing to determine the rights of all parties, cures any defect therein, in the absence of objection thereto prior to the hearing so ordered. 22-207

449. Allowed where date of notice is in doubt and the default in filing, if any, but one day. 1-110

450. Failure to appeal in time because of temporary closing of local office is excusable. 2-211

451. Time waived on account of diligence shown by the appellant. 1-103

452. Served on the opposite party and mailed within the time allowed for taking an appeal from the General Land Office does not bring it within the rule as to time, if not received at the General Land Office within the period fixed therefor. 18-137

453. Mailing to the local officers within the time allowed for taking, from their action, does not bring the, within the rule as to time, if not received at the local office within the time fixed therefor. 28-8

454. Time for filing, from decision of commissioner begins to run from the date

service is first made, whether it be upon the party himself or upon his attorney, either local or resident in Washington. 11-439

455. Where notice of commissioner's decision is served on attorneys in Washington and by the local officers on the party or his local attorney (in Colorado), time will begin to run from date of the latter service. (See 11-439). 1-464; 2-374

456. Time for taking, begins to run from date when service of notice of decision is first made, where said notice is served both on the attorney of record and the party he represents. 14-428

457. In computing the time for filing, where notice of the decision is served on the resident attorney, the day of mailing the decision and one day additional should be excluded. 17-139

458. Where the last day allowed for filing, falls on a legal holiday the appellant has until the next business day within which to file his appeal. 20-183

459. If laches is not imputable to decedent for failure to appeal in time, it is not imputable to his privy in estate (assignee) not notified. 2-769

460. Where an appeal is tardily asserted, if it involves rights which seem to demand consideration, the case will be considered. 2-598

461. Must be taken within the prescribed time by a transferee who has notice of a decision adverse to the entryman. 8-485; 10-111

462. Filed by transferee before notice of decision was served on entryman is in time. 5-598

463. One who consents to delay in taking, can not be heard to raise the question of time if the department takes action on the merits of the case. 14-423

464. The local office has no authority to extend the time within which an appeal may be taken from its action. 13-250; 14-423

465. Application for extension of the time allowed for, should be presented to the General Land Office and before said period has expired. 14-423

466. A stipulation of the parties extending the time allowed for, from a decision of the General Land office is ineffective in

the absence of departmental consent thereto. 13-44

467. Time for, can not be extended by stipulation of attorneys. 14-423

468. Rules affecting the time for, modified in Oklahoma townsite cases. 12-187

469. From the commissioner's decision on claims arising before townsite trustees in Oklahoma must be taken within 10 days from notice of the decision. 13-268

470. The departmental instructions with respect to the time allowed for, in Oklahoma townsite cases were intended to be applicable to all cases in which townsites are parties. 18-139

471. Failure to comply with the instructions respecting, in Oklahoma townsite cases, will not defeat the right of appellant to be heard, where his action was based on the construction of said requirement adopted by the local office. 18-139

472. Failure to, within the proper time, in proceedings arising before a townsite board, will not defeat the right of appellant to be heard where the appeal was filed within the time accorded therefor in the notice given of such right. 22-54

473. Failure to file in time will not of itself deprive a litigant of the right to the relief he may be justly entitled to; but such relief will be granted, in a proper case, through the exercise of the supervisory authority of the Secretary, although the right of appeal may have been properly denied. 33-160

(g). Specification of Errors.

474. From commissioner's decision must contain specification of errors. 1-109

475. Specifications of error, to receive consideration, should set out the particular objections raised to the decision from which the appeal is taken. 14-700

476. Will not be entertained in the absence of a specification of errors that clearly designates the errors of which the appellant complains. 20-329; 24-489

477. Should set forth briefly and clearly specific exceptions to the decision complained of. 4-343; 9-370; 11-214; 13-249

478. An allegation that the decision is "contrary to the evidence" is not such a specification as will entitle the appellant to be heard on appeal. 4-343

479. The mere filing of a "notice of appeal" as provided by Rule 76 (Rules of Practice of 1910) is not of itself sufficient to invoke consideration by the Secretary of the Interior upon the merits of the case; but there must be filed therewith, or within 20 days after service of such notice, "brief and specification of error," as provided by rules 50 and 80. 40-130

480. An assignment of error to the effect that the decision is contrary to the law and evidence is not sufficient to sustain an appeal on objection thereto. 15-566

481. A specification of error that sets forth that the decision is "contrary to law and the facts, and is unjust, unreasonable, illogical, and biased," is not sufficient. 12-29

482. An allegation that the decision is "contrary to law and the practice of the Land Department" is not a sufficient specification. 5-158

483. An allegation that "the commissioner erred in dismissing the contest" and that "the commissioner erred in sustaining the decision of the local office" is not sufficient. 9-560

484. Will be dismissed in the absence of specifications of error. 4-551; 5-158; 6-315; 10-111; 12-98; 13-574; 21-553

485. Rules 88 and 90 with respect to, are mandatory and must be construed together. 5-111

486. Right of, defeated by failure to file specifications of error within the proper time. 5-111, 251

487. Will be dismissed if notice thereof and copy of specifications of error are not duly served upon the opposite party. 9-264, 276; 10-546

488. Not defeated by failure to file specifications of error within the required time where such failure was caused by the appellant's inability to secure a copy of the decision. 8-192; 12-74

489. Amended specifications of error filed out of time can not be accepted on the ground that the delay was caused by the necessity of employing new counsel. 14-217

490. Specifications of error sufficient where made by reference to the specifications filed on appeal from the local office

and the grounds of the appeal are explicitly set forth therein. 12-476

491. Will not be dismissed for the want of sufficient specifications of error if the errors alleged can be fairly ascertained therefrom. 9-11

492. Assignment of error on refusal of the Secretary to reverse the commissioner in certiorari proceedings is meaningless, no issue having been made before the department. 2-743

493. Specifications of error on appeal to the department are not limited to the points raised by the appeal from the local office. 12-67

494. Rule 82 does not contemplate notice to the appellant with opportunity for amendment where proper specifications of error are not filed. 14-217

495. Right of, from commissioner's decision is lost where the appeal from the local office does not contain a specification of errors and is dismissed for that reason. 14-176

(h) Notice Of.

See IX, h, HEREOF.

496. Without notice of, to the opposite party in interest will not be entertained by the department. 1-109; 5-169;

9-188; 10-408, 595; 11-249, 385; 12-93; 14-452; 16-384; 18-421

497. To the department, will not be considered in the absence of notice to the opposite party, although the appeal of such party was dismissed for failure to file the same in time. 17-145

498. Will not be entertained if a copy thereof is not served upon the opposite party within the prescribed period. 11-385

499. Will not be considered by the department in the absence of notice to the opposite party and due proof thereof. 11-48; 13-4

500. Will be dismissed if there is no proof that a copy of the appeal and specifications of error was served on the opposite party. 11-48

501. Rule 46, requiring notice of, from local office, is mandatory and has all the force and effect of law. 12-199

502. In the case of, from the local office the Rules of Practice make no specific pro-

vision as to the manner in which notice of, shall be served, and, in the absence of such provision, notice given in the manner required by the local courts will be held good. 27-142

503. Where decision is inadvertently rendered by the department in the absence of proof of service of the appeal, such decision will not be disturbed on motion for review, in the absence of a showing of reversible error, merely because of want of proper service of the appeal. 34-371

504. Notice and grounds of appeal must be filed within the time required in the Rules of Practice. 3-134

505. Mailing a notice of, prior to the expiration of the time allowed for, is not the service of notice required, if in due course of the mail the notice could not be received by the opposite party until after the expiration of said period. (See 18-543.) 17-480

506. Mailing copy of, within the time allowed for appeal is sufficient service of. 5-475; 18-543; 21-35

507. Notice of, must be served on the opposite party within the time allowed by the Rules of Practice for taking an appeal, and if not duly served within said period the appeal may be properly dismissed. 17-480; 24-322

508. Copy of notice of, need not be served on the appellee when the appeal is from a decision of the local office (rules of 1880). 2-612

509. Notice to opposite party of, not required in case before the local office (rules of 1880). 1-472

510. Departmental ruling in force at time of appeal should be recognized in matter of rejected application. 14-662

511. Notice of appeal from rejected application to enter to other applicants not required where the question is solely between each applicant and the Government. 13-392

512. Rule 70, as amended, does not apply to an appeal from a decision holding an entry for cancellation. 12-93

513. Taken from a decision holding an entry for cancellation on account of the adverse claim of another will not be entertained in the absence of due notice to such adverse claimant. 11-375

514. From the rejection of an application to enter will not be entertained in the absence of notice to an adverse claimant of record. (See 17-325.)

11-621; 19-482

515. Notice of, from the local office should be duly served upon the appellee.

9-252

516. Appellant from a decision of the commissioner affirming an order of the local office rejecting an application to enter is not required to give notice to a subsequent applicant for the same tract whose application is suspended during the pendency of the proceedings on appeal. 16-285

517. On appeal from the denial of an application to contest an entry the appellant is not required to serve the entryman with notice thereof.

23-412

518. From the refusal of the local office to entertain a protest against a mineral application, does not require the appellant to serve the applicant with notice thereof.

24-349; 26-196

519. Notice of, and specifications of error may be filed at different dates.

5-251

520. There is no prescribed form of words to be used in giving notice of, and to serve the appellee with a true copy thereof is sufficient notice.

11-406

521. The words "I desire to appeal," with assignment of grounds and promise to file argument, is a sufficient notice of appeal.

2-391

522. The notice of, is sufficient where a copy of the specifications of error, which is entitled "appeal to the Secretary," and in the body thereof "prays an appeal," is duly transmitted by registered mail to the appellee, and receipt thereof is not denied.

21-234

523. A mistake in the name of appellant or appellee's attorney in notice of, is not fatal thereto where received in due time by the attorney of appellee and no prejudice to appellee is claimed.

12-67

524. That names the parties, describes the judgment complained of, and states the grounds of complaint, is sufficiently specific without giving the number of the entry or the legal subdivisions of land involved.

16-300

525. Will not be dismissed on the ground that notice thereof was not given

appellee or his attorney where the service was upon one who, prior thereto, had represented appellee as attorney and where no prejudice to appellee is shown. 12-113

526. Where a notice of, is served on the attorney of the adverse party, as shown of record, the right of such appellant to be heard should not be affected by the fact that said attorney was not at such time authorized to represent the appellee.

25-372

527. Service of notice of, on appellee's attorney of record not insufficient because at the time of such service said attorney had become register of the local office wherein the case originated, where it does not appear that the appellee had any other attorney at the time of such service, and no prejudice is claimed.

28-485

528. A motion to dismiss, for want of notice thereof, will not be sustained on behalf of a protestant represented by an attorney who appears for other protestants, equally interested in the same matter, who do not deny due notice.

18-176

529. Where acceptance of service by appellee is coupled with an objection to the consideration of the appeal on the ground of insufficient notice thereof, such objection should be presented in due form and supported with proof.

12-220

530. Notice of, may be served either upon the adverse party or his attorney.

24-489

531. The acceptance of service by the authorized attorney of appellee on a brief filed in support of an appeal is sufficient to confer jurisdiction on the department.

12-220

532. The words "service accepted" indorsed on the, by the attorney of appellee imply service of notice accepted, and the acknowledgment of the receipt of "copy" thus indorsed implies that such copy is of the paper so indorsed.

11-406

533. A notice of, from a decision of the local office, left in the office and upon the desk of the appellee's attorney, may be regarded as sufficient, if the fact that such notice was actually received by said attorney is apparent from the record.

22-67

534. Rule 105, providing for the service of notices upon attorneys, is one of convenience, and not of exclusive right; hence

an. is not defective in the matter of notice, if the service is made upon the appellee, and not upon his attorney. 24-277

535. Will not be dismissed on the ground that a copy thereof was not served in time on the opposite party if the record does not show when notice of the decision was served on the appellant. 11-49

536. A copy of the appeal and argument thereon mailed to the register of the local office is not notice of such appeal to the adverse party if not served on him by said officer. 19-95

537. Served by registered letter on the "land commissioner" of a railroad company is proper service on said company. 22-688

538. Served on a general land agent of a railroad company is sufficient service on said company. 22-184; 23-331; 24-339

539. Failure to serve notice of, on the opposite party not excused on the plea of ignorance of the law and Rules of Practice. 22-88

540. Should not be dismissed on account of insufficient proof of service of notice thereof, without opportunity given to show that service was in fact duly made, where the adverse party appears and does not object to the service. 23-529

541. Where two or more cases, involving the same tract of land, have been consolidated and considered together, notice of, must be served upon all parties in interest. 24-402; 25-416

(i) Defective.

542. Appellant entitled to notice of defective. 5-251

543. Rule 82 is only to prevent the transmittal of an appeal the commissioner considers defective. 5-99

544. Rule 82 applies only to appeals from the decision of the commissioner to the Secretary. 20-130

545. Whether defective under rule 82 or incomplete under rules 88 and 90, it must be sent to the department for its action. 6-315

546. Rule 82 not applicable in cases where the commissioner holds that the right of appeal does not exist. 10-572

547. The department is not concluded by the failure of the commissioner to act under rule 82. 5-99

548. That appellant is not notified under rule 82 of his default in omitting the proof of service until too late to make the service can not affect his status or the rights of appellee. 10-595

549. From commissioner, if defective, will be dismissed by the department. 4-343

(j) Waiver.

550. Waiver of appeal bars right to begin a new contest on same grounds. 3-397

551. Waived by the initiation of another contest. 4-382; 5-350

552. Pending, not waived by the initiation of second contest on new ground. 5-451

553. Right of appeal not lost by motion for review. 3-539

554. Waived by a subsequent application for repayment. 5-409; 9-643

555. From a decision holding an entry for cancellation waived by a subsequent application for repayment of the purchase money. 11-624

556. Abandoned by an application to purchase the land. 7-342

557. Waived by new application to enter the land. 9-29

558. Not lost through fraudulent waiver by attorney. 4-332

559. Withdrawal of, by authorized attorney conclusive. 4-267

560. Election of the State to rely on a protest against an adverse claim and not appeal from the rejection of a school selection leaves it bound by the action on the protest. 15-316

V. Continuance.

See FINAL PROOF, VI.

561. Instructions of December 27, 1882, concerning. 5-142

562. Can not be effected by mere agreement of the parties. 4-234

563. Motion for, is addressed to the sound discretion of the local office. 5-647; 6-165, 345, 440; 7-61

564. Abuse of discretion on application for, will be reviewed on appeal. 5-647

565. The discretion of the local officers in acting upon a motion for, will not be interfered with if abuse of such discretion does not appear. 22-382; 27-99

566. Affidavit for, can be made before the day of hearing. 1-106

567. Affidavit for, held good though made prior to the day of hearing and before an officer other than the register or receiver. 5-142

568. Regularity of, can not be questioned by the party who procured it. 9-255

569. Of a case from day to day with the knowledge and consent of the parties precludes subsequent objection to such action. 11-346

570. Order for, should be properly noted of record. 3-588

571. Not granted without proper showing of diligence. 3-581; 5-273

572. Affidavit for, on the ground of absent witnesses should show that such absence is not the fault of the applicant and what efforts have been made to procure their attendance. 7-63

573. Affidavit for, on the ground of absent witnesses should show that diligence was exercised to secure their attendance and that their absence was without the consent of procurement of the applicant. 16-106

574. Where a case is once continued on account of an absent witness and on the day so fixed for trial an application is made for an order to take the deposition of said witness, a further continuance should also be duly asked for. 16-295

575. To secure additional testimony, should not be granted in the absence of due diligence shown. 16-362

576. On the ground of absent counsel or witness, should be denied if diligence is not shown. 7-497

577. Where, on application for, on the ground of absent witnesses, the adverse party admits that said witnesses, if present, would "testify to the statement set out," the applicant is not prejudiced by a denial of his application. 20-342

578. Order of, should be granted on application of contestant where it appears that he has not received due notice of the day fixed for hearing, is unable to appear

on said day, and witnesses as to material facts are absent. 17-132

579. Where granted on motion of defendant with an order to take testimony before a commissioner it is error to permit contestant to submit testimony on the day first set for hearing, even though the notice of the continuance and order served on the contestant is defective. 21-35

580. A motion for, in order that evidence may be secured to show that the appearance of the attorney for the opposite party is not authorized, is addressed to the sound discretion of the local officers, and their action thereon should not be disturbed unless it clearly appears that there has been an abuse of this discretion. 20-223

581. Can not be demanded as matter of right on the ground that the applicant's attorney is engaged in a trial in another court. 9-523

582. Application for, that depositions of witnesses who refuse to attend may be procured, is in time if made on the day of trial. 8-197

583. It is not essential that the interrogatories required by rule 24 be filed with an application for continuance and order to take depositions, made under rule 21; it is sufficient that the interrogatories be prepared with reasonable diligence. 31-67

584. May be granted to take depositions though a hearing has been held under rule 35. 10-480

585. Not granted after admission as to the evidence of absent witnesses under rule 22. 4-385

586. May be granted to adverse claimant in case of protest against final proof. 5-211

587. May be allowed in case of surprise on due showing. 1-105

588. Where a continuance is granted by a notary public it should not extend beyond the time set for the examination of testimony at the local office. 2-233

589. Failure to appear on the day to which a case is continued is sufficient ground for dismissing the contest. 13-390

590. Agreement of counsel to an indefinite postponement of the hearing works a discontinuance of the case. 10-459

591. A hearing ordered on the report of a special agent may be properly continued in the interest of the Government, and the allowance of two or more continuances for such reason is not an abuse of discretion, provided due notice is given in advance of such action. 17-508

592. To be ordered in pending cases on removal of local office. 7-527

VI. Costs.

See ACCOUNTS; FEES.

593. To be paid by contestant who seeks a preference right under the act of May 14, 1880. 3-51;

6-763; 20-153; 22-419, 462

594. In a contest under section 2, act of May 14, 1880, the contestant must pay the costs, including the cost of testimony to be taken by deposition on behalf of the contestee. 30-11

595. Of a desert-land contest, under act of May 14, 1880, must be paid by contestant. 19-383

596. A contestant who attacks a timber-culture entry for the purpose of securing a preferred right of entry must pay the. 22-312

597. Of a contest must be paid by a timber-culture contestant who attacks an entry for the purpose of securing the land under act of June 14, 1878. 13-289

598. To be paid by contestant though the evidence is taken before a stenographer on agreement. 4-207

599. The plaintiff, having rested his case on the admitted testimony of his absent witnesses and paid the costs to that point of the case, is not excused from paying the costs of taking the testimony of defendant's witnesses. 3-51

600. If at any stage of the proceedings in a hearing prior to closing the same the contestant waives his preference right of entry, or declines to pay the costs, as required under rule 54, the case should proceed as though begun under rule 55. 20-197

601. Where prior to decision on the merits of a contest proceeding the local officers require contestant to reimburse defendant for costs of taking testimony, and on appeal from such requirement their action is sustained, the case should there-

upon be remanded for action on the merits. 37-444

602. Of a rehearing must be borne by the contestant. 16-481

603. A party who files a protest alleging grounds sufficient to warrant cancellation of the entry, if proven, and offers to pay "the expenses of the contest," is properly taxable with all costs as a contestant, under rule 54; and if, after a successful termination of such suit and the exercise of the preferred right by the contestant, a rehearing is ordered on the original issue, the obligation to pay the costs thereof rests with the contestant. 26-384

604. Equally apportioned in case of hearing ordered to ascertain in whom the right of entry exists. 3-449

605. Where hearing is ordered on allegations of fraud against an existing patent by one who purposes entering the land, each of the parties should pay the expenses of introducing his own testimony. 2-761

606. Under rule 57 (rules of 1880) the contestee is not required to pay the expense of cross-examining the contestant's witnesses. 6-660

607. Should be apportioned in accordance with rule 55 in a contest where no preference right is claimed under the act of May 14, 1880. 14-13

608. In contests under rule 55 each party must pay for taking the testimony of his own witnesses both on direct and cross-examination. 10-625; 11-388; 18-559

609. In a hearing ordered to determine whether a contest is speculative, as charged by an intervening entryman, each party must pay his own costs, as provided in rule 55. 19-426

610. A contestant who seeks to secure the right of entry solely on the ground of priority of settlement is not required to pay the, incurred by other parties to the suit. 23-251; 25-12

611. In a hearing ordered between a railroad company and one alleging the land in question to have been excepted from the grant, are properly taxable under rule 55. 26-57

612. The rule observed in apportioning costs of taking testimony in contests arising under rule 55 should be followed in

hearings ordered on special agents' reports. 26-519

613. Under a contest in which the contestant asserts no right to the land, but charges noncompliance with law, and offers to pay the costs of the proceedings, the costs should be assessed under rule 54. 22-248; 26-210

614. Should be taxed in accordance with rule 55 in proceedings under rule to show cause why an entry should not be canceled. 22-113

615. Costs of transcribing cross-examination charged to the party making the same. 3-194, 333

616. Of cross-examination of contestant's witnesses are to be paid by the defendant. 2-85

617. Of frivolous or vexatious cross-examination of witnesses are to be paid by the party introducing it. 2-196, 232

618. Protracted hearings and vexatious accumulation of costs are within the control of the local office. 3-194

619. Each party to pay his own, in contest upon final proof. 3-247

620. Extraordinary expenses are to be paid by the party in whose interest they are incurred. 2-196

621. Contestant required to deposit for a reasonable estimate of preliminary cost, and additional deposits may be required if found necessary. 3-194

622. The local officers may require a deposit to cover the cost of taking testimony in a contest. 6-599; 8-493; 13-659; 20-275

623. Requiring the claimant to make a deposit to pay for the cross-examination of the Government witnesses is presumptively a proper exercise of discretionary authority. 9-131

624. Contestants should only be required to deposit a reasonable sum as security for the cost of transcribing testimony. 2-196

625. Money deposited for costs is to be retained until contest is finally disposed of, when unexpended balance is to be returned. 2-218

626. On defendant's failure to cross-examine witnesses at the proper time the recall of said witnesses should be at his expense. 5-647

627. The "land office fees" referred to in section 2, act of May 14, 1880, are the costs of contest. 4-19

628. A motion to retax, is not an original or independent proceeding, but incidental to the trial; and after the case has passed beyond the jurisdiction of the local officers they have no authority to entertain said motion, nor will the department pass on the same until the trial case comes up for consideration. 13-73

629. On motion to retax, the official report of the local officers, as to an oral agreement between the parties, made in open court, must control as against the statement of counsel. 28-382

630. A motion to dismiss on the ground that contestant has not paid the requisite fees should not be sustained where prior to action thereon said fees have been paid. 14-91

631. Of reducing testimony to writing in contest cases is taxable at 15 cents per 100 words, except in States where a higher rate is fixed; that the actual expense of the clerical service amounts to less than the authorized rate does not warrant the taxation of such costs at a rate based on the actual expense. 12-478

632. A proposition to pay the, of a rehearing, if one should be ordered, can not be considered in aid of a motion for a new trial. 25-487

VII. Hearing.

See X HEREOF.

633. Rule 2, amended July 14, 1895. 19 45

634. Ordered on special agent's report; regulations of July 16, 1898. 27 239

635. The matter of ordering, discretionary with the commissioner. 8-444; 9-288, 379

636. Discretion of commissioner in ordering, not controlled except clear abuse thereof is shown. 8-444; 9-217, 584; 10-250; 13-706; 26-66

637. Refusal of commissioner to order will not be disturbed if such action does not amount to the denial of a right. 11-307; 20-359; 25-506

638. The ordering of hearings is within the commissioner's discretion and may not be the subject of an appeal. 2-40, 581

639. An order directing a hearing, though generally not appealable, will be reviewed by the department, when brought to its attention by appeal or otherwise, if it appear that said order involves matters which the Land Department can not inquire into, or is contrary to law, or the settled rulings of the department, or is otherwise palpably erroneous. 29-302

640. Authority of commissioner to order, may be reviewed on certiorari.

13-259

641. Discretionary with commissioner whether he will order, on protest filed against final proof.

11-273

642. Discretionary authority rests with the commissioner to refuse an order for, where the allegations on protest are deemed by him insufficient and the corroborating witnesses testify from information and belief.

12-49

643. Authority of commissioner to order a new, not affected by an erroneous ruling of the local office.

7-433

644. Commissioner may, in the exercise of a sound discretion, order second, on proceedings by the Government.

6-39

645. May be ordered by commissioner at any time prior to patent where information is required for the proper disposition of the case.

6-174

646. Application for, addressed to the Secretary calls for the exercise of his discretionary authority, and he should therefore be fully informed as to all facts connected with the subject matter.

11-349

647. Authority of local office to order, fixed by rule 5.

1-481

648. Rule 5 applies to hearings between homestead claimants and between pre-emption and homestead claimants.

2-224

649. The department will not interfere with the action of the local officers in directing, in any case unless it be shown that by such action they have exceeded their authority.

28-50

650. Should not be ordered on a protest that involves charges already under investigation by the Government.

19-442

651. Will not be ordered on an adjudicated issue.

18-299

652. Under contest proceedings against a final entry can only be ordered under the direction of the General Land Office.

10-694; 16-152

653. May be ordered on the affidavit of the attorney.

1-480

654. Local offices may order, on protest against final proof.

1-86, 448; 7-483

655. Should not be accorded one who fails to appear and protest against final proof.

5-210

656. The local office may order, to test the validity of an entry.

3-310

657. An application for, on a protest should not be granted if the allegations therein contained do not make out a *prima facie* case calling for the cancellation of the entry.

25-125

658. May be ordered by the local office to determine the right of a homestead applicant as against a railroad grant.

10-281

659. Ordered on charge of fraud and doubt as to the correctness of the record.

4-265

660. Should not be ordered on a general charge of fraud.

9-545

661. Should not be had pending disposition of an appeal arising under a previous contest.

5-227

662. To ascertain facts where the case came up on *ex parte* evidence.

4-168

663. Will not be ordered on an unverified statement to determine a question of priority alleged in the face of an adverse record.

8-294

664. Application to reopen a case for, should not be granted in the absence of specific showing of facts relied upon to warrant such action.

16-259

665. Will not be directed on the application of an intervening entryman who alleges no specific right as against a successful contestant.

15-358

666. Will not be allowed on the application of a transferee who purchases after judgment of cancellation.

13-305

667. Not accorded mortgagee of entry except it be shown that the former proceedings were irregular.

5-385

668. Should be ordered to settle alleged priorities as between adverse claimants.

6-509, 643, 766

669. Should be ordered when filing is offered for land covered by the entry of another and prior settlement right alleged.

5-526; 6-330; 8-528; 12-684

670. Should be ordered when a homestead applicant alleges prior settlement as against the entry of another.

15-379;
16-210; 18-23

671. Will not be ordered as between an agricultural and mineral claimant where the former asserts no right in himself during the period of publication, and the refusal of such an order is not the denial of a right.

10-572

672. An application to make homestead entry of land embraced in a prior application under the act of June 3, 1878, is not sufficient ground for a hearing to determine the character of the land.

33-534

673. Further hearing should be ordered in case of new issues arising on the trial that were not included in the original charge.

1-113

674. Failure to apply for, under an order holding an entry for cancellation on the report of a special agent admits the truth of the charge on which said order is made.

16-259

675. Failure to apply for, within the specified time after notice of a rule to show cause why an entry should not be canceled is a confession of the charge and a waiver of all claim to the land.

12-189

676. On a general order to an entryman to show cause why his entry should not be canceled and the application of another allowed, he may set up any charge affecting the invalidity of the adverse claim.

10-250

677. If neither party appears at day set for, the case should be dismissed.

1-112

678. Default at a, ordered by the commissioner will not be excused on the ground that the defaulting party had filed a motion for review of the decision ordering the hearing.

18-527

679. Failure to submit testimony on due opportunity offered in the regular course of proceeding cuts off right to be further heard.

5-446

680. A party who chooses to abide by his overruled demurrer to his opponent's evidence is not entitled to further hearing.

40-274

681. Under swamp-land circular of December 13, 1886.

5-279

682. Order dismissing hearing not interlocutory.

4-473

683. When ordered on charge made by a protestant he can not set up his own claim to the land.

16-532

684. Hearings before the local officers must be held at the local office, and no testimony may legally be taken by either of them elsewhere without specific instructions from the Land Department.

2-204

685. Notice of the time as well as the place of both original and adjourned hearings should be given.

2-227

686. Where the testimony is authorized to be taken elsewhere than at the local office, neither party should be permitted to submit further testimony on the day set for the hearing at the local office, except upon due notice to the other and proper order therefor.

34-396

687. Contestant is entitled to notice of, when allowed by commissioner on application to contest a final entry.

17-133

688. Where the hour of the day to which a hearing is adjourned has not been fixed the parties have the whole of the day in which to appear.

2-226

689. Hearings must be fixed at the earliest date practicable and before officers who will attend to them promptly.

3-121

690. When the hour for hearing on final proof is not named in the notice appearance on the day is sufficient.

3-334

691. Local office may not cite contestants before other offices.

1-474

692. Ordered by the department is not affected by the circular instructions of May 15, 1889, issued to special agents by the General Land Office, directing the suspension of proceedings wherein it is believed the Government will not be able to sustain the charge against the entry.

11-369

693. Failure of the Government by reason of some unforeseen emergency, to have a representative present at the time and place fixed for hearing upon a special agent's report against an entry is no bar to a second order for a hearing to determine the true facts with respect to the entry under investigation.

39-72

694. A motion to dismiss a contest for want of a sufficient charge, in a case where the evidence is taken before a commissioner is in time if made before the local office on the day set for the hearing.

29-351

695. The fact that neither of the local officers is present while the witnesses are testifying does not affect the regularity of the proceedings, where there is no vacancy at such time in the office of either register or receiver, and the witnesses are sworn by one of said officers and both of them subsequently examine the testimony and render joint decision thereon. 27-425

696. A statute that provides for action on the part of the Secretary "after allowing opportunity for all parties in interest to be heard before him," does not require such officer to personally hear the witnesses testify and listen to oral arguments, if all parties have notice and are permitted to submit evidence and written arguments that are considered by him.

26-280

697. Regulations of May 3 and June 26, 1907, relative to hearings on charges by forest officers.

35-547, 632

VIII. Intervener.

698. A stranger to the record not entitled to be heard as an intervener without first disclosing his interest under oath.

3-134, 278; 5-603; 7-454, 480; 8-578; 13-392

699. General statement of attorney, under oath, that the intervener is the present owner of the land not accepted under rule 102.

9-628

700. Sworn statement of attorney, disclosing the interest of an intervener, must contain a full showing of his means of knowledge, and such facts as will affirmatively show that the party seeking to intervene has a present interest in the matter involved.

11-365

701. A motion made by a stranger to the record to dismiss the pending proceeding will not be entertained, except by way of intervention, when the case comes up for final action.

9-613

702. A stranger to the record can not plead "former practice."

3-301

703. A stranger to the record will not be allowed to intervene for the purpose of reopening a case finally adjudicated without notice of his interest; nor is the applicant in such case entitled to be heard on appeal from the denial of his application.

20-116

IX. Notice.

- (a) Generally.
- (b) By Publication.
- (c) Heirs, Minors, and Insane.
- (d) To Transferee.
- (e) Effect of Appearance.
- (f) Of Decision.
- (g) Of Cancellation.
- (h) Of Appeal and Review.

(a) Generally.

704. Circular with respect to the registration of letters containing notice of hearings and decisions. 3-140; 5-204; 6-12

705. Rules of 1878, regulating service, same as those of 1881.

1-108

706. Rules with respect to proof of, must be strictly followed.

1-106

707. Rule 8 contemplates a notice issued under a contest initiated to secure the preferred right of entry accorded by the act of May 14, 1880.

12-462

708. Rule 9, amended, July 14, 1894.

19-45

709. Rules 11, 14, and 17, amended.

26-710

710. Rules 17, 44, and 91, amended, and rule 8½ established.

30-622

711. Instructions of August 18, 1910, revoking circular of September 9, 1874, providing for notice to homestead entrymen of expiration of five years.

39-159

712. By circular of July 31, 1885, directing the manner in which notice of proceedings on a special agent's report shall be served, personal service, if the claimant can be reached, together with notice by registered mail, is requisite to confer jurisdiction.

28-45

713. There is no statute requiring special notice to any person in proceedings before the Land Department to establish a claim for public land; but in the practice followed special notice of such proceedings is given to all adverse claimants as shown by the records of the local office. But where it appears that knowledge of the

proceeding has been brought to the attention of an adverse claimant, or where notice of his claim was not filed in the local land office, such claimant will not be heard to plead want of notice on the ground of not having been specially notified. 30-160

714. Of hearing can only be issued by the local officers. The authority can not be delegated to another. 13-429

715. Of contest must be issued by the local office, but service thereof rests with contestant. 2-230; 10-268

716. It is incumbent upon one who files an affidavit of contest to look after the, issued thereon, and secure due service thereof. 22-377

717. Rule 60 requires contestants to serve their own notices, and one who fails to comply with this requirement will not be heard to complain if his application for a hearing is dismissed. 26-286

718. May not be signed by a clerk; must be signed by one or both of the local officers. 2-228

719. Of contest may be signed by one or both of the local officers. 11-418

720. Of contest not invalidated by the omission of the register to affix to his signature thereto his official designation. 11-269

721. Should show the time as well as place set for the hearing. 2-227

722. Of a hearing ordered by the commissioner on a contest against a final entry should be given the contestant. 17-133

723. Service of, is fatally defective where the purported copy delivered to the defendant does not show the true date of the hearing as fixed in the original notice. 12-44; 36-179

724. Of contest will not be held defective for want of certainty as to the day fixed for trial, where it is apparent that the alleged defect did not operate to the prejudice of the defendant. 27-673

725. Of hearing must state the time and place therefor and describe the land involved, and if defective in these particulars jurisdiction is not acquired thereby. 13-429

726. Of contest is sufficient if it substantially follows the affidavit of contest. 23-140; 24-383

727. Of a contest should recite the charges contained in the affidavit of contest, but will not be regarded as defective if it shows a sufficient allegation to support a judgment of cancellation. 11-418

728. That does not set forth the grounds of contest is defective and does not authorize proceedings thereunder. 10-593

729. Of a hearing directed to ascertain priorities between adverse claimants is not defective though it may not contain the charges on which the hearing is ordered. 12-462

730. Where duly given and the case continued to a day certain, the jurisdiction of the local office is not defeated by failure to insert the day of hearing in a notice to take testimony before a commissioner. 15-47

731. Papers containing statements or arguments relative to contest cases should not be filed therein if they do not bear evidence of service on the opposite party. 18-167

732. Misnomer in notice a fatal defect. 3-418

733. Slight error in spelling defendant's name will not defeat. 7-441

734. A slight error in the spelling of claimant's name, occurring in the service of, will not defeat said service, where the rule of *idem sonans* is applicable. 19-226

735. If not addressed to the appellee in his true name and it does not appear that he received the same, the department acquires no jurisdiction. 9-168

736. Of contest properly served, with correct description of the land, the charge against the entry, the contestant's name, and the time and place for the hearing, is not fatally defective because of a misnomer of the defendant therein, as the process is amendable in that respect either before or after judgment. 7-61

737. Question of, is jurisdictional, and if raised at any time or apparent on the face of the record the department is bound to take cognizance thereof. 9-75, 561

738. A case will not be remanded on objection to, though such objection be well grounded, where the defendant appears, participates in the trial, and appeals, ask-

ing for a judgment on the merits of the case, and no prejudice is shown. 18-586

739. In all cases where sufficient service has been made on an adverse party, who fails to appear or respond, the case shall be treated as *ex parte*, and can thereafter be proceeded with without further notice to him. 31-318

740. Jurisdiction not acquired in the absence of proper service. 2-220;

4-397, 425, 440, 537;

6-234, 335; 9-75, 168

741. *Ex parte* proceedings without, will not warrant an order of cancellation. 9-522

742. Proceedings may be dismissed for want of, though the entry is canceled on the admissions of the claimant. 1-107

743. Must be shown affirmatively of record to confer jurisdiction. 5-398, 611; 8-578; 13-398

744. Proof of service must be filed in the local office by the contestant. 14-319

745. In the absence of legal, actual knowledge does not put a party upon defense. 4-378; 5-213, 253

746. Personal service must be had when possible. 1-107; 5-253, 457

747. Should be personally served on the entryman in the case of a hearing ordered on the application of an adverse claimant. 19-406; 22-436

748. Must be by personal service under rule 10. 4-410, 537

749. Not required that a, should be served within the jurisdiction of the local office from which it is issued. 24-383

750. Personal service, in case of contest, may be properly made upon a nonresident. 28-330

751. In personal service delivery of a "copy" only is required, and such copy may be printed or written or partly printed and partly written. 6-669

752. In the personal service of, of contest, rule 9 does not require an exhibition of the original, when a copy is delivered to the defendant. 22-89

753. That the original instead of a copy was left with defendant is no valid objection to the service. 5-590

754. Personal service is not secured by reading the notice to the wife of defendant and delivering to her a copy at the

house and usual place of defendant's residence. 14-162

755. Leaving a copy at defendant's house with some member of his family is not such service as is contemplated by the Rules of Practice. 21-335

756. Service of notice of a contest by leaving a copy with the husband of contestee is insufficient and confers no jurisdiction. 39-60

757. Service of notice of a contest on Sunday is invalid and no jurisdiction is thereby acquired. 39-60

758. Personal service may be secured through registered letter. (See 11-604.) 5-254

759. Service by registered letter is personal service as required by rule 15. (See 11-604; 18-586.) 10-388

760. Service by registered letter on nonresident held good where notice was received more than 30 days before hearing. (See 11-604; 18-586.) 5-213; 9-131

761. Of contest can not be served by registered letter, and such service confers no jurisdiction upon the local office. 11-604; 12-311, 620; 13-546;

18-586; 19-405; 24-14

762. Of contest by registered letter to a defendant who is a resident of the State does not confer jurisdiction upon the local office. 16-120

763. Of contest served on resident defendants by registered mail is not personal service within the meaning of rule 9. 22-222

764. When service is admitted or undisputed it is not material that the affidavit as to service should show the "place" thereof. 6-669

765. If service is not denied and is duly made, the manner in which proof thereof is made is not material. 10-273

766. Objection to the jurisdiction of the local office, on the ground that the record does not afford due proof of service, is not well taken where legal service is not denied. 21-383; 34-534

767. Where service of notice of a contest is made in time under Rule 8 of Practice the contest will not abate, merely because of failure to file proof of such service, until the time for closing the issues shall have expired. 40-496

768. The filing of an answer to the merits by the contestee in a contest proceeding constitutes a waiver of the right to take advantage of the default of the contestant in failing to file proof of service of notice within the time fixed by the Rules of Practice. 40-496

769. A contestant in order to claim default of the contestee for want of answer within the time provided by Rule 13 of Practice should file proof of service of notice of the contest in apt time and should, after the expiration of the time for answer fixed in said rule and before the answer is filed, move for a default; and in case of failure to do so he loses the right to claim such default. 40-496

770. On objection to the service of, the contest should be dismissed, if the ground of objection is well taken, and the contestant does not apply for an alias notice. 24-250

771. Acknowledgment of service is a waiver of all irregularities in the mode of service. 12-239

772. Of a motion to set aside proof of service, should be given the opposite party. 7-274

773. Service by a party in interest is permissible under rule 10. 6-552

774. Of contest must be served in accordance with the departmental rules and not under the civil procedure of the State. 10-477

775. Regularity of, as shown by the record, will be presumed. 4-570

776. Sufficient where through continuances service preceded the hearing 60 days. 5-41

777. New, to the defendant not required where an objection to the charge is sustained and leave to amend allowed. 10-405

778. New service not required where contestant is allowed to amend, but a continuance of the case may be allowed in the discretion of the local office. 15-223

779. Issuance of new, without due showing of diligence and inability to serve the first is irregular, but does not defeat service thereunder. 9-68

780. A party that fails to appear on the day fixed for hearing will not be permitted to plead want of, as to adjourned proceedings. 17-4

781. Failure to perfect service of, where a case is continued for that purpose, is proper ground for dismissal of case. 14-689

782. Where a contest has been dismissed for illegal inception, notice must issue and trial be had in a new contest, though record in former contest sustains the allegations. 2-286

783. Questions affecting the sufficiency of, can only be raised by defendant or one claiming under him. 4-127;

11-199; 28-136

784. A stranger to a contest will not be heard to question the sufficiency of the notice. 33-65

785. Where testimony is to be taken under rule 35 as amended the notice must state the date of taking the testimony and the date of hearing at the local office. 2-235

786. In computing the period of, given by personal service of a hearing before the local office, the day on which service is made should be excluded and the time counted from the next succeeding day. 21-164; 22-640

787. Thirty days', of a hearing is sufficient though an earlier date may be named in the notice for taking testimony under rule 35. 4-540; 15-289; 28-301

788. Intervening entryman is entitled to notice of any action that necessitates cancellation of his entry. 10-302

789. Of the time and place fixed for a hearing to one of contestant's attorneys is due notice to the contestant. 16-152

790. To an attorney of record of any action in a case is notice to the party he represents. 7-252; 14-287, 700

791. Service of, upon the attorney in fact for the defendant is not sufficient, in the absence of proof that such attorney was empowered to receive service on behalf of the defendant. 28-361

792. Of a hearing granted on application in support of an entry is sufficient if given by registered letter. 16-47

793. Notice of a defect to an agent through whom an application is filed is notice to the principal. 2-279

794. Rights lost through want of diligence in giving notice of contest. 4-491

795. Should be given before considering motion to dismiss. 4-489

796. Motion to dismiss will not be entertained in the absence of notice to the opposite party. 9-619

797. A contestant is entitled to notice of the dismissal of his contest, and where not served with notice of such action, his rights are in no wise prejudiced thereby. 33-85

798. Of proceedings by Government not on same basis as in case of a contestant seeking to secure cancellation. 14-84

799. Of action on townsite application should be given the party who files the same. 14-628

800. Should be given the attorney of a railroad company of proceedings involving title under the grant where such attorney has been designated by the company to receive all such notices. 15-247

801. Should be given the opposite party in the case of a petition to the commissioner requesting the submission of a question to the department for summary action. 13-277

802. Of an application for certiorari should be served upon the opposite party. 13-673

803. Of an application for certiorari need not be served upon the attorney of the opposite party where due service is made upon the party himself. 13-520

804. Of an attorney's act imputed to the party he represents. 5-439

805. Proceedings on a case reopened should not be had without due notice to all parties. 5-212

806. To be given in pending cases on removal of local office. 7-527

807. To Indian claimant should be given through the Indian agent and where practicable to the Indian personally. 3-449

808. In the case of a contest against an entry made under the general homestead law by a native-born Indian who has abandoned the tribal relation, it is not necessary to serve notice of such proceeding upon the Indian agent. 27-502

(b) By Publication.

809. The essentials of service by publication defined. 4-84, 230; 5-213, 611

810. Instructions of May 27, 1905, relative to contents of affidavit filed as basis

for service of notice of contest by publication. 33-578

811. Instructions of November 14, 1902, and May 23, 1908, relative to affidavit for notice by publication. 36-294, 443

812. In publication of, rules 13 and 14 must be strictly followed. 9-606

813. Rule 14 amended so as to not require posting on the land in case of Government proceedings against entries under the timber and stone act. 14-54

814. Rule 14 (1896) does not require, in service by publication, where the suit is against the heirs of the entryman, and the post-office address of such heirs is unknown, that a copy of the notice be sent to said heirs at the last-known address of the entryman. 29-445, 587

815. In service by publication, under rule 14 as amended, it is essential that notice of a contest against the heirs of a timber-culture entryman whose address is not of record or named in the affidavit filed as the basis for publication should be mailed to them, by registered letter, at the post office nearest the land. 30-304

816. The affidavit required as the basis for publication may be made by any person who possesses the requisite information. 15-238; 22-566; 25-74

817. Service of notice of a contest by publication in accordance with the old Rules of Practice, although not made until subsequent to February 1, 1911, the date upon which the new rules became effective, will be held sufficient where the contest was initiated and personal service sought to be had while the old rules were in force, such service being based upon the effort to secure personal service and failure therein. 40-353

818. Rule 11, which provides for service of notice of a contest by publication where it is "shown by affidavit that due diligence has been used and that personal service can not be made," contemplates that such affidavit shall be made by the person or persons who made the search and inquiries in the endeavor to ascertain the whereabouts of the defendant with a view of making personal service; and where notice is published upon an affidavit made by another, upon information furnished by the person who made the effort to obtain personal service, such

notice is fatally defective and no jurisdiction is acquired thereunder. 35-462

819. Rule 11 does not require a formal order of publication by the local officers. It is sufficient if they authorize publication, either by formal order or verbally. 21-277; 25-74

820. Service by publication is not authorized in the absence of due order therefor based on a proper showing of diligence and inability to secure personal service. 17-159

821. Service by publication is authorized where it is made to appear that personal service can not be secured by persistent and diligent effort. 14-162

822. Service by publication not authorized where failure to secure personal service is due to claimant's neglect to advance the fees required by the officer for such service. 12-311

823. Service by publication should be set aside when it appears that by ordinary diligence personal service could have been obtained. 4-536

824. Notice by publication can be given only where personal service can not be had. 2-203

825. By publication is the proper notice to be made where the party to be served is shown to be a nonresident. 21-277

826. Publication is warranted on an affidavit that alleges the defendant to be a nonresident and shows that personal service can not be secured. 27-654

827. On affidavit by contestant that he can not obtain personal service the local officers may authorize notice by publication; he must furnish evidence of publication, post a copy of the notice on the land, and prove such posting by affidavit; if they know no address to which a copy of the notice can be mailed, their report should so state. 2-230

828. Publication only authorized when it is shown by the affidavit of the contestant or such other evidence as may be required that, due diligence having been exercised, personal service can not be obtained. 4-84, 536; 13-240

829. If evidence is offered in support of the affidavit filed as the basis for publication, it should be written out and attached to the affidavit. 13-240

830. Order for publication should not be made if the affidavit does not show what effort has been made to secure personal service. 1-85, 107, 299; 4-229; 6-335, 669; 9-75, 168, 606

831. Publication without the affidavit required as the basis for such form of service confers no jurisdiction. 5-456; 6-669; 7-49; 8-452; 11-315

832. The failure of the notary public to attach his seal to the jurat to the affidavit filed as the basis for the service of notice of a contest by publication, upon which affidavit publication was made, was a mere clerical error, subject to correction at any time, and did not deprive the local officers of jurisdiction to proceed with the contest. 37-603

833. Where proper affidavit for publication is furnished, and the order therefor duly made, but the service is defective, and new notice is required, a further showing as a basis for publication is not necessary. (See 29-693.) 28-279

834. If error occurs in service by publication, which makes necessary a republication, a new affidavit should be filed as basis therefor, except where the defect in service is discovered during the publication and proper publication is promptly made. 29-693

835. Affidavit as the basis for publication is sufficient which sets forth that affiant lives in the vicinity of the land, is well acquainted there, knows that defendant does not there reside, and that after diligent search he is unable to find said defendant. 7-274

836. As a prerequisite it must appear that personal service can not be obtained, and such showing must include attempted personal service on a transferee where his interest is known and he is a party to the suit; and in the absence of any such showing as to said party an order for publication is not authorized. 20-380

837. The publication and posting of notice of a hearing ordered on the application of a mineral claimant to determine the character of land returned as agricultural, and listed as part of an odd-numbered section within the primary limits of a railroad grant, is not sufficient notice to the company. 29-27

838. Allegation that the address of claimant is unknown will not warrant publication of notice. 2-50, 63, 288;

3-249, 418, 518

839. An allegation that personal service can not be made within the State is not essential as the basis of publication. 5-635

840. In an affidavit filed as the basis of publication which sets forth that defendant is not a resident of the State, and personal service can not be made, it is not necessary to show what efforts have been made to secure personal service. 11-621

841. Where the affidavit filed as a basis of publication does not specifically allege that the entryman is a nonresident of the State, it should show the date upon which inquiries as to the entryman's whereabouts were made, that they were made with a view to obtaining personal service, and that at that time the contestant was prepared to make personal service. 34-473

842. Failure to show diligence in attempting to secure personal service, prior to securing an order of publication, can not be set up on behalf of a nonresident transferee. 22-701

843. An affidavit that sets forth conclusions and not facts is fatally defective as a basis for notice by publication. 6-669

844. The showing required to authorize publication must be made before issuance of the order therefor. 6-669; 8-452; 9-218

845. Publication not authorized on an affidavit that fails to show what effort has been made to secure personal service. Such defect can not be cured by additional affidavits filed after the issuance of notice. 6-669; 16-26; 19-316

846. Though the required affidavit is the basis of publication, its absence is not necessarily fatal; the proceedings, so far as irregular, may be set aside and be resumed from the point of departure. 2-286

847. Where notice by publication is insufficient (for want of proper affidavit) and personal service was not made 30 days before hearing, proceedings based on them are void. 2-288

848. Where the superior standing before the Land Department acquired by the applicant is to be attacked the contestant

must strictly observe the regulations (time, posting, and mailing). 2-766

849. A case should be remanded for further hearing where judgment by default is obtained, and it appears that the notice was served by publication and was not published in the newspaper nearest the land, and that a meritorious defense exists. 19-123

850. In service by publication the day of the first insertion in the newspaper may be computed as forming part of the required period. 10-620

851. Publication once a week for four consecutive weeks an essential in service by publication. 3-529; 9-131

852. Directions given that publication of notices of restoration to settlement and entry of lands temporarily withdrawn with a view to possible inclusion in a national forest be reduced to a period of four successive weeks. 39-386

853. Where publication for 60 days is required there must be publication once a week for 10 consecutive weeks. 19-105

854. In service by publication sending a copy by registered letter and posting are essentials. 3-326; 9-75

855. By publication defective for want of copy by registered letter is not made good by subsequently mailing such notice without new posting and publication. 11-433

856. The refusal of defendant to receive and open a registered letter known by him to contain a notice of contest will not defeat the service. 12-403

857. In service by publication a copy must be mailed by registered letter to the last known address of the defendant. 1-107; 4-378; 6-269; 8-558; 10-664

858. The entryman's address as given in his application to enter may be accepted by the local office as his post-office address in transmitting notice of contest by registered mail. 9-135

859. Service by publication is defective, if a copy of the notice is not mailed by registered letter to the defendant at his post office of record. 24-350

860. Mailing by registered letter a copy to the address of defendant as appearing of record is compliance with rule 14. 27-654

861. In the service by publication the copy to be sent by registered mail should be directed to the "last known address" of the defendant, and not to the post office nearest the land. 21-319

862. An allegation that inquiry for the defendant has been made in the locality of the claim, and at his "last known address," may be accepted as sufficient in that respect, though that address is not the one shown by the record, in view of the fact that the place of publication and hearing is at said record address, and no appearance is made in response to the notice. 22-566

863. An affidavit as a basis for service by publication must show what efforts have been made to secure personal service; and where it fails to show that inquiry as to the whereabouts of the entryman was made at his address of record, and also fails to show that inquiry has been recently made in the vicinity of the land, it does not show due diligence. 32-37

864. An allegation that the post-office address of the claimant is unknown does not excuse failure to mail notice to the *last known* address of such claimant. 10-666

865. A nonresident defendant will not be heard to say that the affidavit filed as the basis for publication was insufficient in that it failed to specify his last known address, where it appears that he in fact received the notice sent by registered mail. 27-99

866. In making service by publication it is not material who deposits the registered letter in the postoffice, so that in fact such letter is sent as required by rule 14. 19-220

867. It is the publication, and not the registered letter required by rule 14, that constitutes legal notice; but such letter must have been mailed 30 days before the date of hearing. 2-229

868. Of contest by publication includes posting on the land, and jurisdiction is not acquired without. 1-107;

5-611; 8-578; 9-131, 561

869. In service by publication posting in the local office and mailing notice by registered letter are essentials without which jurisdiction is not acquired. 6-408

870. Misstatement as to date of posting will not defeat the service where the error is corrected by special affidavit and testimony of the contestant. 8-46

871. An error in the description of the land, occurring in the proof of posting, is not material, where it is apparent that the posting was duly made on the land in question. 19-220

872. A nonresident will not be heard to say that due diligence was not used to secure personal service. 5-456

873. Service by publication can not be defeated by a subsequent allegation under oath that the defendant's residence could have been easily ascertained. 12-453

874. Want of actual, may not be alleged if there was proper service by publication. 5-635

875. Where publication of notice was irregular the technical objection to it will not be heard when the record shows that the alleged abandonment existed. 2-63

876. Service by publication should be set aside when it satisfactorily appears that defendant is a well-known resident of the county in which the land is situated and that personal service could have been obtained by ordinary diligence. 12-568; 16-378

877. On motion to set aside service of, the local officers may properly review their own action in directing publication. 13-240

878. Service by publication is fatally defective where in the affidavit and the subsequent publication the defendant is erroneously designated as "Frederick Van Dem" instead of "Hendrik Van Oene." 12-47

879. Jurisdiction is not acquired by publication until the end of the period of publication, and an order of the General Land Office, made before the expiration of said period, allowing an amendment of the entry involved, prevents the acquisition of jurisdiction by the local office. 17-400

880. No jurisdiction is acquired by publication where the first publication was not made until after the expiration of 60 days from the date of the execution of the affidavit therefor. 23-337

881. Where the first publication is not made within 60 days from the date of the execution of the affidavit, the filing of a

second affidavit after the expiration of 60 days, supplementary to the first and not of itself sufficient as a basis for service by publication, and the publication of notice thereon, can have no effect to confer jurisdiction upon the local officers. 33-337

SS2. The department has full authority to review the action of registers of local offices in designating the newspapers in which notices under the public-land laws shall be published, *after the register shall have exercised his discretion in any particular case*, and, if abuse of such discretion appear, to take such action as may be necessary for the correction thereof; but it will not, in advance of action by the register, give general directions as to which of several newspapers published in any locality shall be recognized as the proper medium for the publication of notices relating to claims to public lands in that vicinity. 35-404

(c) **Heirs, Minors, and Insane.**

SS3. Notice must be served on all heirs and not on the administrator and one of them only. 2-227

SS4. To an heir who is also administrator of the deceased entryman may be regarded as notice to him in both capacities. 7-267

SS5. Legal service upon minor heirs requisite to confer jurisdiction in case of proceedings against an entry made in their name. 15-1

SS6. Must be served upon the heirs and legal representatives in case of contest against the entry of a deceased homesteader. 12-510; 15-27

SS7. Diligence to ascertain the names and last known address of the heirs or legal representatives of deceased timber-culture entryman required. 8-452

SS8. On the substitution of the widow as defendant she is entitled to. 12-14

SS9. Where a deceased homesteader is named as sole defendant in a contest against his entry, and notice of the contest is directed to and served upon his widow, who was not made a party but who appeared and participated in the hearing, no jurisdiction is thereby acquired, and the contest and all proceedings had thereon are absolutely void and of no effect. 35-367

S90. Should be given heirs of defendant in case of his death during pendency of proceedings, and case continued for such purpose. 16-146

S91. Compliance with the requirements of rule 9 must be affirmatively shown to confer jurisdiction under proceedings that require service of notice upon minors heirs. 27-432

S92. Of timber-culture contest should be served upon the heirs or legal representatives of deceased entryman. 8-452

S93. In proceedings against the heirs of a timber-culture entryman jurisdiction is not acquired in the absence of, to all the heirs, or due appearance on their part. 17-532

S94. Should be given the sole devisee of a deceased timber-culture entryman in attacking the entry. 8-452

S95. Service upon an alleged guardian will not confer jurisdiction over a minor if the fact of guardianship is not established. 9-218

S96. Where contestee is insane, notice may not be served on him nor on the superintendent of an asylum where he is confined. 2-230

S97. Of a contest against the entry of an insane person must be served in accordance with the statutes of the State or Territory. 10-238

S98. In a contest against the entry of a deceased homesteader it is necessary to serve notice only upon such of his heirs as are citizens of the United States. 40-552

(d) **To Transferee.**

S99. Transferee of record entitled to notice of hearing. 5-170, 253

900. Transferee not of record not entitled to, on the adverse disposition of the entryman's appeal. 5-276, 589

901. Transferee of an entry entitled to notice of hearing. 5-22, 170, 253

902. Assignee who has filed in local office statement showing interest in pending entry is entitled to. 5-603; 9-561, 576

903. Of proceedings against an entry should be given a transferee who has filed in the local office a disclosure of his interest. 8-641; 10-566

904. A transferee or mortgagee, if his interest or claim is known, is entitled to

notice of any action affecting the entry, whether the fact of his interest is made known to the land officers by a statement under oath or in some other way. 31-51

905. Of all action taken should be given a mortgagee whose interest is disclosed by the record, and in the absence of such notice the right of said party to be heard is not defeated by a judgment of cancellation. 15-224

906. Mortgagee may not plead want of, unless it is shown that the existence of the mortgage was made known to the local office in time for service. 9-131

907. A transferee who has not filed in the local office a statement of his interest can not plead want of. 9-561; 10-446; 22-701

908. The assignee of a desert entryman is not entitled to notice of action by the Government, adverse to his interests, if he has not prior to such time filed evidence of the assignment. 26-499

909. Failure to give, to a transferee who has filed a disclosure of his interest will not authorize reinstatement of an entry in the absence of reversible error in the judgment of cancellation. 10-566

910. An entry erroneously canceled without notice to a transferee whose interest was made known to the Land Department, will be reinstated upon application of the transferee. 31-51

911. Transferee entitled to, under proceedings by special agent where the county records show the transfer. 9-576

912. Local officers under no obligation to search the county records to ascertain whether there is a transferee before issuing. 9-576

913. One known to the contestant and local office as an actual party in interest is entitled to. 9-480

914. Objection as to that given the entryman can not be heard from a transferee who was duly notified. 8-46

915. Transferee who is duly served with, and is represented at the trial, can not be heard to object that the heirs of the deceased entryman were not properly served. 8-197

916. Purchaser before patent not entitled to notice of contest proceedings. 1-106

917. A purchaser from the State of lands selected by it as school-land indemnity, who fully discloses his interest, is entitled, under rule 8½, to notice of proceedings in the Land Department affecting such land; and it is not necessary that counsel authorized to represent the purchaser shall also show authority to represent the State. 35-529

918. Rule 8½, providing that transferees and incumbrancers, by filing notice of their interest, become entitled to the same notice of "any contest or other proceeding" affecting the entries under which they hold as is required to be given the original claimant, is not limited to contest cases or causes where there are adverse parties, but is equally applicable in an *ex parte* proceeding. 35-387

919. Transferees or incumbrancers, in filing notice of their interest under rule 8½, should furnish satisfactory evidence of their real interest in the premises, agreeably to the requirements of rule 102. 35-387

(e) Effect of Appearance.

920. General appearance without objection to, waives defects therein. 1-116; 4-378; 6-269, 335; 9-643; 11-198; 12-263; 17-393

921. A general appearance is a waiver of all defects or irregularities, if any exist, of notice, process, or service, necessary to confer jurisdiction. 25-122

922. A defendant who appears generally without objection to the sufficiency of, can not raise such question after judgment. 11-418

923. Where the entryman appears and invokes the judgment of the department he will not be heard to subsequently plead want of notice. 12-14, 32, 620

924. One who admits the service of, and appears generally without allegation of prejudice can not plead a defect therein. 11-269

925. Stipulated postponement to a day certain waives all objection. 16-122

926. Of proceedings waived by appearance for the purpose of securing a new trial. 15-404

927. General appearance on hearing day and stipulation for continuance is a waiver of any irregularity in the service. 12-263, 602

928. Any defect in service or proof of service is waived by the defendant appearing and procuring a continuance.

10-273

929. Insufficiency of, may not be alleged by one who has secured a continuance to a day certain.

8-524

930. Appearance for purpose of objecting to service of, does not confer jurisdiction; nor is the objection waived by subsequent participation in the trial.

16-120

931. Special appearance for purpose of objecting to service of, does not waive errors in said service.

9-131

932. Right to legal, not waived by proceeding to trial after objection.

4-378,

440, 537; 12-620; 14-689

933. Participation of counsel in examination of witnesses after motion to dismiss is overruled does not affect the force of his objections to the service.

9-131

934. Objection to jurisdiction of local office, on ground that notice was not properly served, is not waived by proceeding to trial after a motion to set aside the service is overruled and exception taken.

22-222

935. Where notice is defective defendant may waive the informality, and does so if he proceeds to trial; but he is entitled to the full period of notice and may demand a continuance if he has not had it.

2-203

(f. Of Decision.

936. Of decisions should be formal and in writing.

1-477; 4-73, 591; 11-261

937. Of departmental decisions and orders should be promptly served by the local officers.

27-339

938. In giving, of a decision, in a matter between the entryman and the Government, it is the duty of the local office to use all record means at its disposal to obtain service on the entryman.

29-77

939. Circular directions with respect to notice of decisions.

3-140; 5-204; 6-12

940. Of a decision holding an entry for cancellation may be given by registered letter.

12-192

941. Of a decision by unregistered letter is not sufficient evidence of service.

11-261

942. Of a decision by mail, whether by registered or unregistered letter, will not bind the party to be served if such notice fails to reach him.

11-574

943. A mere docket entry of, by registered letter is not evidence that service of notice of a decision was in fact so made.

25-533

944. In the absence of, decision does not become final.

1-366; 7-42; 18-421

945. Of decision must be shown affirmatively to cut off right of appeal.

6-108, 123

946. Of a decision will not be presumed; it must affirmatively appear of record.

10-678

947. To losing party of adverse decision should include a copy thereof.

5-233;

16-187; 18-192

948. The rule that requires copy of decision to accompany the, is not applicable where notice is sent by General Land Office to attorneys of record resident in Washington.

19-461; 20-89; 26-348

949. Acceptance of service of a decision and of the "further right of appeal," signed by an attorney of record, is conclusive as to service and a waiver of the right of such attorney or his client to receive a copy of the decision in question.

22-22

950. In writing from the General Land Office to the resident attorney of record in a case that "action has this day been taken" therein, is sufficient notice of an adverse decision.

19-461

951. Of decision to an attorney of record is notice to the party he represents.

3-248; 5-248; 9-170; 11-394;

12-388; 17-139; 19-354; 25-34

952. Of decision to one of several attorneys representing the party is sufficient.

1-119; 13-265

953. Of decision to an attorney who appears in a case on acknowledged authority is notice to all counsel appearing for the party he represents.

18-88

954. Where a party is represented by two attorneys of record, and one accepts, of decision, such party will not be heard to plead a private understanding between himself and his attorneys under which all notices were to be served on the other attorney.

25-34

955. Of decision to an attorney of record is notice to the party; and he will not be

heard to say that the employment of said attorney had in fact terminated prior to service of said notice, if such fact is not disclosed by the record. 25-294

956. A party to a proceeding before the Land Department will not be heard to say that the attorney who represented him throughout and solely conducted such proceeding was not his authorized attorney to receive service of notice of the result thereof. 33-501

957. Of decision to the attorney of record is notice to the party, but not to the heirs of such party. 13-594

958. Of decision may be served either on the attorney of record or the party. 14-428, 443

959. Of rehearing given to the attorney of the party who applies therefor is sufficient. 15-404

960. Of dismissal of a contest by the local office should be given contestant's attorney. 15-436

961. To one of contestant's attorneys of dismissal of the contest is notice to contestant. 16-152

962. Of decision presumed from relation of attorney to the various parties. 4 194

963. Of decision to attorney who acted in the initiation of the contest, but not at the hearing, is sufficient. 3-183

964. Admissions of claimant and counsel as to notice of decision conclusive. 6-122

965. Of decision to which the attorney of a party is entitled is not susceptible of service by publication. 6-335

966. Of decision when given to both the party and his attorney through the local office dates from service on the party. (See 11-439.) 1-464; 2-374

967. Of decision shown of record not impeached by unverified statement of attorney. 6-775

968. Of decision mailed from General Land Office on date of signature. 6-140

969. Of decision to resident consul by General Land Office must be regarded as served on third day after it is mailed. 17-139; 18-478

970. Failure to receive, of decision is no ground for reinstatement of contest if due to contestant's negligence. 14-319

971. Failure to receive, of decision can not be set up by one whose own laches has

prevented service in the manner prescribed. 11 574

972. A party is not entitled to be heard on the ground that he did not receive notice of adverse action on his application to enter where notice of such action was sent to the post-office address furnished by him and adverse rights have intervened. 19-195

973. In the absence of a showing of fraud, an entryman will not be heard to allege failure to receive, of a decision holding his entry for cancellation, where such failure is due to his own negligence and rights of a third party have intervened. (See 28-45.) 18-161

974. Of decision can not be claimed as a right by a transferee who has no statement of his interest on file in the local office. 14-126

975. Of decision should be given transferee where the fact of transfer is disclosed by the evidence, and in the absence of such notice the decision does not become final as to said transferee. (See 34-167.) 13-78; 17-48

976. Of decision is not served by mailing a copy to an address not given by the party. 13-225

977. Relation of attorney and client with respect to notice from the department considered. 3-409

978. In the absence of proof it will be presumed that notice sent by mail from the General Land Office to nonresidents was received at the expiration of 15 days from date of mailing. 6-140

979. Where notice of a decision is given by registered letter addressed to the party by name, in care of his attorney, the time within which appeal may be filed does not begin to run from time of delivery of the letter to the attorney, but from date of its actual receipt by the party himself. 36-247

980. Under rule 87, where notice of a decision of the General Land Office is given through the mails 70 days are allowed from the day notice is mailed within which to file appeal, irrespective of when the notice is actually received or whether the appeal is filed through the mails or otherwise. 36-400

981. Where notice of a decision is given by registered letter, the registry return

receipt is the highest evidence of service, and the date of delivery of the letter as shown by the receipt is the date of notice of the decision. 35-307

982. Where proof of service of notice by mail is supplied as required by rule 18, it will be presumed, after the expiration of the time specified in rule 67, that the notice was received in due course of mail, but service by mail will only bind the party served from the time the letter was actually delivered, as shown by the registry return receipt. 35-307

983. Written admission of receipt of, in case of decision is proof of service. 6-108

984. Of an order revoking the suspension of an entry must be definite in its terms. 23-240

985. Lands involved in a contest or other controversy before the Land Department should not be passed to patent until the defeated party shall have been given notice of the closing of his case, with record evidence of its service, and lapse of reasonable time for him to seek relief against irregularity or error of such final order. 33-295

(g) Of Cancellation.

986. Of cancellation given through the mails should be in strict conformity with rules 17 and 18. 9-490

987. Of cancellation of an entry to contestant's attorney is notice to contestant. 3-409; 9-70, 478; 10-324; 11-202; 15-307; 21-542

988. Addressed to contestant but sent through his attorney is not notice to contestant until actually received by him, and the 30-day period within which he may exercise his preference right does not begin to run until the notice has been so received. 39-160

989. Direction given that all notices advising contestants of the cancellation of the contested entries and of their right to apply to make entry of the land in virtue of the preference right accorded by statute shall be sent to contestant personally at his address of record. 39-160

990. The powers and authority of an attorney at law representing the contestant in a contest proceeding end with the judg-

ment of cancellation; and notice of such cancellation and of contestant's preference right of entry should be given to contestant personally and not to the attorney. 39-225

991. Of cancellation to successful contestant not sufficient when given by unregistered letter. 7-335

992. Sent to address given by contestant precludes his right to plead want of notice in the presence of an intervening claim. 11-574

993. Of cancellation to successful contestant by registered letter, is not effective if it fails to reach him, and such failure is not due to negligence on his part. 26-1

994. Of cancellation can not be denied in the presence of an intervening claim when sent to the address given by contestant's attorney. 13-670

995. Of cancellation to a successful contestant sent by unregistered letter is not sufficient. 8-477

996. Of cancellation to an attorney erroneously entered of record is not notice to contestant. 6-509

997. To entryman's agent of an order of cancellation is notice to the entryman. 12-189

998. Of cancellation should be given to assignee if the fact of such interest is known. 5-603

999. Of cancellation can not be claimed by a mortgagee who has not filed in the local office a statement of his interest. 13-556

1000. Of cancellation to a successful contestant must affirmatively appear of record to charge him with failure to exercise his preferred right within the statutory period. 18-439

1001. One who files an affidavit of contest pending disposition of a prior suit against the same entry is not entitled to notice of cancellation if the entry is canceled under the prior proceedings. 23-378

(h) Of Appeal and Review.

See IV, h, HEREOF.

1002. Should be given appellee in case of appeal from the local office. 9-252

1003. Of appeal and argument should include legible copies thereof. 5-449

1004. Of appeal may be served by registered letter, and proof of such service is made by affidavit of the person mailing such letter, attached to a copy of the post-office receipt. 12-59

1005. Mailing appeal and specification of errors by registered letter within 70 days after notice through the local office of the adverse decision is proper service. 5-475, 479

1006. Of appeal from a decision favorable to entryman must be served on the representative of his estate if entryman dies prior to appeal. 6-779

1007. Of appeal sent by nonregistered letter is sufficient if the receipt thereof is acknowledged in writing. 5-479

1008. Transmission of, in case of appeal, by registered letter *prima facie* evidence that it was duly received. 5-475, 479

1009. Written admission of the receipt of, in case of appeal sufficient. 5-479; 6-108

1010. If not addressed to appellee in his true name and he did not receive the same, the department is without jurisdiction. 9-168

1011. Service upon attorney of record sufficient notice of appeal. 4-8

1012. Of appeal from the rejection of application to enter, departmental ruling in force at time of appeal should be recognized. 14-662

1013. Of appeal to other applicants for the same tract need not be given in case of a rejected application to enter where the question is solely between each applicant and the Government. (See 17-325.) 13-392

1014. Of motion for review should be given within the time for filing such motion. 4-99, 106

1015. Of motion for review must be given to opposite party. 4-145; 5-382

1016. Where two or more cases, involving the same tract of land, have been consolidated and considered together, notice of motions for review must be served upon all parties in interest. 24-402

1017. Prior to reconsideration of final departmental action, due, should be given all parties adversely affected, and intervening claimants called upon to show cause why their entries should stand. 26-143

1018. Of motion for review, and oral hearing thereon, may be given to attorney of record representing party before the department, and when so given is conclusive. 26-111

X. Proceedings by the Government.

1019. Instructions respecting practice at hearings for the purpose of inquiring into alleged fraudulent entries, ordered on reports of special agents. 2-807

1020. Circulars of July 31, 1885, and May 24, 1886, directing manner of proceeding against entries on special agent's report. 4-503, 545; 5-149, 372; 21-367; 29-141; 34-439; 36-112, 178, 367; 39-458

1021. Pending cases not affected by the circular of July 31, 1885. 5-372

1022. On special agent's report; order of July 6, 1886, returning cases for disposition under the circular of July 31, 1885, as amended. 5-149

1023. On special agent's report, instructions of November 4, 1895. 21-367

1024. Will not be held conclusive in the absence of notice as required by circular of July 31, 1885. 11-278

1025. Entryman not entitled to plead want of notice of, where he appeared as a witness for the Government. 11-311

1026. Ordered on report of special agent must be conducted in accordance with the practice in contests, so far as applicable. 9-131

1027. On special agent's report a proceeding *de novo*. 5-22

1028. A report by the Director of the Geological Survey, based upon an examination by a field agent, concerning an application for reservoir site, may serve as a basis for a charge and order against the applicant to show cause why his application should not be rejected, but is not evidence upon which final action adverse to applicant may be taken without notice to him and opportunity to be heard. 40-484

1029. It is within the discretion of the commissioner to order a second hearing in the interest of the Government. 6-39

1030. The right of the Government to test the validity of an entry in a direct proceeding is not defeated by its failure

in a collateral proceeding to ascertain the character of said entry. 20-516

1031. The department will not control the discretion of the commissioner in ordering a hearing on the report of a special agent where the facts as alleged in said report are denied. 6-705

1032. Discretionary authority conferred upon commissioner by rule 72 will not be controlled in the absence of apparent abuse. 9-626

1033. Investigation of an entry by special agent may be directed without recognizing an adverse claimant as a party thereto where the question at issue is solely between the entryman and Government. 13-524

1034. Should not be ordered on report of special agent on matters covered by a former contest unless collusion existed between the parties. 9-217

1035. Will not be ordered on the report of a special agent if the facts as shown therein are not denied. 8-306

1036. The Government has the right to appear before the local office, submit testimony, examine witnesses offered by the parties to a contest, and to direct the continuance of a case in order to investigate the same. 8-2

1037. Withdrawal or death of contestant does not prevent action on evidence adduced. 5-40, 386; 8-598

1038. The department on behalf of the Government may take advantage of information brought out on trial. 4-512; 5-372, 395, 590; 6-200

1039. The department may on its own motion institute proceedings looking to cancellation of an entry. 4-235, 239, 249, 260; 7-25

1040. A hearing may be ordered after preemption entry is allowed, to inquire into fraud reported by a special agent. 2-787

1041. A hearing is not necessary where the facts as shown by special agent's report are not denied; but if the entry is canceled the claimant or assignee is entitled to be heard before the department on the record as made. 8-306

1042. Admission by the entryman that the facts as stated by a special agent are true does not extend to a conclusion contained in the agent's report. 11-462

1043. During pendency of, a stranger to the record will not be allowed to show intervening rights, but must await disposition of the pending action. 11-507

1044. In proceedings by the Government the local officers and special agent are under no obligation to examine court records to ascertain the interests of transferees. 16-47

1045. A transferee may be heard to defend the entry where the county records show his interest and the proceedings were had without notice to him. 9-576

1046. Transferee entitled to be heard where the entry is canceled without notice to him even though the record does not show the transfer. 8-283, 526

1047. Transferee entitled to notice of, where the special agent's report disclosed the fact of transfer. 5-170

1048. Failure of entryman to apply for hearing on due notice of order of cancellation on special agent's report is a confession of the charge and a waiver of claim to the land. 6-777; 16-259; 22-433

1049. In case of suspension of an entry on report of a special agent, with opportunity to entryman to apply for a hearing, the entryman by making such application without objection to the sufficiency of the notice of suspension, does not thereby waive the right to object, at the hearing, to the sufficiency of the charge in the notice. 35-227

1050. The charge in a notice of suspension of a timber and stone entry, to the effect that the entry was not made in good faith for the exclusive use and benefit of the entryman, but at the solicitation and for the benefit of another, states a sufficient cause of action, and if proven would require the cancellation of the entry. 35-227

1051. Circular of May 15, 1889, directing suspension of, where success is doubtful, not applicable to hearings ordered by the department. 11-369

1052. Cases decided in regular course of business should not be reopened by the department *sua sponte* after the lapse of a considerable period and in the absence of any alleged fraud or wrong to an adverse claimant. 6-629

1053. The entryman may show acts in compliance with law performed after notice of proceedings. 7-486

1054. May be dismissed by the local office on motion, subject to review by the General Land Office. 5-3

1055. When ordered on special agent's report the Government should submit its testimony first. 4-62, 65; 5-2, 22

XI. Protestant.

See IV AND VII HEREOF; MINING CLAIM, IX; PROTESTANT.

1056. Status not that of a contestant. 2-581; 3-399; 6-765

1057. Protestant loses his right to be heard by failure to appear at hearing after due notice. 3-374

XII. Rehearing.

See XIII HEREOF.

1058. Rule 114, regulating motions for, before the department rescinded, and new rule substituted therefor. 18-472

1059. Rule 114 amended. 23-106

1060. Rule 19 of practice contemplates that orders for rehearing shall be served in the manner prescribed by rule 9, which requires personal service. 38-267

1061. Rule 83 of the new Rules of Practice, providing for motions for rehearing, in lieu of motions for review under the old rules, will be administered as nearly as possible in accordance with the rules governing rehearings in courts of justice, and observance of its provisions will be insisted upon. 40-87

1062. While rule 72 of the Rules of Practice in terms provides that no motion for rehearing of the decisions of the Commissioner of the General Land Office will be allowed, yet said rule will not prevent the commissioner, before appeal is taken, either on his own motion or where his attention is called to an alleged mistake or oversight, from reconsidering and correcting his decision in *ex parte* cases. 40-268

1063. The Secretary may, in exercise of his supervisory authority, by due order, make a motion for, filed out of time, act as a supersedeas, but in the absence of such

order, it should not be so treated in the General Land Office. 26-441

1064. Should not be filed with motion for review, but separately. 13-726

1065. Motion for, is based upon newly discovered evidence or error occurring in the trial. 13-726

1066. Newly discovered evidence furnishes a proper basis for a new trial, if it is apparent that such evidence, if introduced and un rebutted, would determine the issue between the parties, and the applicant for new trial is not chargeable with laches in failing to procure such evidence at the time of the trial. 29-581

1067. Error occurring at the time of trial, by which competent and material evidence is excluded, will be considered on application for new hearing. 29-581

1068. Application for, should not be considered without due notice to the adverse party. 6-236

1069. Failure to serve notice of application for, not excused by misinformation from the local office as to the requirements of the Rules of Practice. 6-236

1070. Application for, made by a contestee who shows want of notice of former proceedings and a meritorious defense, should not be rejected because not served on the opposite party, but the applicant should be required to serve such party with notice of the application. 16-506

1071. Should not be granted in the absence of a *prima facie* case made out for investigation. 6-788; 10-485

1072. Permission to amend defective application for, will not impair intervening adverse right. 6-236

1073. Prior to final action it is within the discretion of the local officers to reopen a case for the submission of additional testimony. 15-93

1074. Application for, made while the case is before the local office should be considered by the register and receiver and decision rendered thereon. 14-227

1075. Application for, should be made before the local office if the grounds therefor are known while that office has jurisdiction. 6-9

1076. Motion for, before the local office should be taken up and disposed of promptly. 3-539

1077. New trial will not be granted on contestant's application save in exceptional cases. 3-551, 563

1078. Except when based upon newly discovered evidence, motion for, must be filed within 30 days from notice of decision. 9-668

1079. There is no limitation as to the time within which a motion for, based on newly discovered evidence, should be filed. 17-220

1080. A motion for, filed out of time can only be received as an appeal to the supervisory authority of the Secretary, and should, therefore, be made by petition addressed to such officer, and filed in the department proper. 25-154

1081. Directed by the department on the general merits of a case brings the record before the General Land Office for decision upon all questions that may thus be presented. 13-254

1082. When granted, the case is generally tried *de novo*, and the petitioner in such case will not be heard to complain of former proceedings therein, however defective they may be. 11-319

1083. Ordered in a contest case is at the expense of contestant. 16-481

1084. Will not be allowed unless the grounds assigned bring the case within the rules and well-established principles relating to new trials. 2-344

1085. Not granted in contested case except under the Rules of Practice. 6-239

1086. An allegation of additional evidence not newly discovered made for the first time on review comes too late to justify. 11-565

1087. Will not be ordered where the evidence proposed to be offered would be merely cumulative. 2-721;

6-9, 32; 9-581; 12-233

1088. On application for, *ex parte* affidavits may be considered where they present newly discovered evidence. 13-562

1089. Will not be granted on the ground of newly discovered evidence where such evidence tends simply to discredit or impeach a witness. 7-136; 22-530

1090. Will not be granted on the ground of alleged newly discovered evidence where such evidence is cumulative and intended to contradict or impeach the witnesses of the adverse party. 25-438

1091. In motions for, resting on newly discovered evidence it should be shown that said evidence could not have been discovered by due diligence, and the facts showing such diligence should appear.

6-9; 7-136; 10-483; 18-31; 19-543

1092. A motion for, on the ground of newly discovered evidence can not be allowed on the unsupported affidavit of the applicant. 18-72

1093. Motion for, based on newly discovered evidence should be supported by the affidavits of the witnesses who will testify to the alleged newly discovered facts, or reasons given for their nonproduction. 11-618; 13-265

1094. A petition may properly be considered, even though the affidavit of petitioner is not corroborated, where the matters alleged as ground for the petition are susceptible of proof by the records of the Land Department. 35-70

1095. Will not be granted on the offer of additional evidence that was withheld on the original proceeding.

13-211, 562; 17-348

1096. A new trial will not be granted on the ground of newly discovered evidence, where such evidence is expected from a witness who was called and examined on the trial, it being the duty of counsel to question the witness, when upon the stand, as to all matters pertinent to the case.

19-543

1097. Will not be granted on the ground of newly discovered evidence where applicant neglects to properly present his case at the hearing before the local office.

13-562; 18-486

1098. An affidavit in support of a motion for, on the ground of newly discovered evidence, must show that the evidence was unknown to the party, not merely to his counsel; and the affidavit of counsel is insufficient without that of the party. 19-543

1099. Allegation of newly discovered evidence as basis for, should specifically state when the discovery was made.

9-581

1100. Motion based upon newly discovered evidence should show that the alleged discovery was acted upon without unnecessary delay and proof of diligence should be clear. 10-96; 11-618; 13-265

1101. Will not be granted on the ground of newly discovered evidence unless such evidence is of a character to necessarily cause the trial court to reach a different conclusion. 7-136; 13-726; 26-441

1102. Not ordered when the application sets up facts that should have been presented at the former hearing and gives no reasons for not presenting such facts at that time. 6-422; 9-581

1103. On the ground of newly discovered evidence will not be granted if the new evidence relates to matters not material under the issue at bar. 18-478

1104. Will not be granted on the ground of newly discovered evidence competent only to support a charge laid in the contest affidavit on which no evidence was offered at the hearing. 18-257

1105. Required where the record is indefinite and it can not be determined therefrom whether the defendant had due notice of the day set for hearing. 11-117

1106. In proceedings by the Government against an entry held by a transferee the entryman is not entitled to, on the ground that he was not served with notice of such proceedings and the orders made thereunder, where he appears as a witness for the Government and sets up no rights under the entry. 11-311

1107. Application for, though once denied, may be allowed where it is made to appear that the decision in question was procured through fraud and deceit practiced upon the Government. 14-93

1108. A second motion for, based upon the same alleged newly discovered evidence considered and passed upon in the disposition of a former motion for rehearing in the same case, should not be entertained. 25-487

1109. Denied where the motion discloses sufficient reasons for canceling the entry. 6-335

1110. May be ordered on the report of the local officers based on an inspection of the land involved. 8-38

1111. An offer to prove statements made by the opposite party to his attorney does not furnish ground for a new trial. 7-136

1112. Should be allowed where evidence was introduced and considered on an issue not raised on the hearing as originally ordered. 7-433; 8-159

1113. Ordered where the case rested upon *ex parte* evidence. 4-201

1114. May be allowed where contestant, relying on the assurance of the local officer before whom the case was heard that evidence sufficient to warrant cancellation had been introduced, did not submit further testimony, and it is found on review of the proceedings below that the evidence in the case does not justify cancellation. 25-464

1115. Not granted on allegation that the evidence was not properly transcribed where such fact might have been discovered while the case was in the local office. 4-184

1116. Will not be allowed where the applicant, relying upon technical grounds, did not submit testimony when the case came up for trial. 7-312

1117. Defendant is not entitled to, when on the trial he submits no evidence, but elects to plead a statutory defense that is subsequently held not good. 16-348

1118. The remedy of a party who is not ready for trial is by way of motion for continuance, and not by application for, filed after default and judgment. 26-341

1119. Will not be granted where it appears that on the trial the defendant rested his case on a demurrer to the evidence that was then overruled, and, at such time, declined to introduce testimony on his own behalf. 20-557

1120. A party in whose interest a, has been ordered, that does not submit evidence, but relies upon a technical defense, must abide his election in event of an unfavorable judgment. 20-369

1121. Where contestant fails to sustain the allegations in the affidavit of contest relative to the nonmilitary service of the entryman, and defendant thereupon moves that the contest be for that reason dismissed, a new trial should not be granted for the purpose of permitting contestant to supply proof he neglected to produce at the hearing, but the contest should be dismissed. 34-203

1122. If the party adversely affected by an interlocutory order withdraws from the case, he is not entitled to have it remanded for further hearing even though it may appear that the local office erred in its ruling. 24-88

1123. Not granted to one whose motion to dismiss for want of evidence is denied by the local office. 16-88

1124. May be allowed where applicant, acting in good faith and believing the officer before whom the testimony is to be taken is prejudiced and interested in the result, does not submit testimony before such officer. 10-433

1125. Where all parties interested had full opportunity to be heard, and no new matter of fact or law is presented, denied. 2-345

1126. Will be allowed for the purpose of showing that collusion between entryman and contestant's attorney defeated the hearing on its merits. 2-583; 7-262

1127. Incompetency of applicant's attorney in the original proceedings not sufficient grounds for. 11-618; 12-233

1128. Not allowed on the plea of poverty as an excuse for failure to submit evidence at the hearing. 17-116

1129. A proposition to pay the cost of a rehearing can not be considered in aid of a motion for new trial. 25-487

1130. On a corroborated charge of fraud, though irregularly made, a rehearing will be ordered. 3-57

1131. Unsworn statement of applicant's neighbors, showing his compliance with law, can not be considered on motion for, in a contested case. 6-239; 10-96

1132. *Ex parte* affidavits after judgment are to be received with great caution, for the reason that they are apt to encourage fraud. 2-720

1133. Can not be secured through an amendment of the contest affidavit that essentially changes the nature of the charge. 21-94

1134. A case will not be remanded to inquire into charges of abandonment subsequent to a final decision of the department, though such charges may form the proper basis of a new contest. 19-294

1135. Failure to comply with the law since the decision is matter for new contest, but not for rehearing. 4-185

1136. Matters arising subsequently to initiation of a contest do not furnish proper grounds for, but should be presented in a new and independent proceeding. 27-73

1137. Will not be ordered on a cause of action arising after the close of the hearing before the local office, and pending appeal from its decision. 25-394

1138. Matters occurring after the original hearing in a case do not furnish grounds for, though such matters may afford sufficient foundation for a new contest. 25-155

1139. A decision of the department, denying a motion for, on the ground that the matters therein alleged were not in issue at the original hearing, does not preclude the commissioner, in the exercise of his original jurisdiction, from subsequently directing an inquiry, in the nature of a new contest, to determine questions arising since the hearing of the original suit. 25-329, 471

1140. Rehearing not allowed after default without excuse. 3-247

1141. Conditional application for, in event of adverse action on a pending appeal, not authorized. 16-266

1142. Not granted where an order therefor made by the local office was set aside on applicant's motion. 5-425

1143. The authority of the commissioner to order, in a contest case is not restricted to cases in which applicant is entitled thereto. 16-481

1144. Commissioner's discretion in ordering, will not be controlled by the department in the absence of apparent abuse of discretionary authority. 11-260; 16-481; 28-503

1145. A decision by the General Land Office ordering, will not as a rule be disturbed on appeal, but the department has full authority to set aside such a decision whenever it is deemed proper to do so. 30-442

1146. Not accorded a transferee unless he shows that he can furnish other and better evidence than that submitted by entryman. 12-462

1147. Rule 72 is limited in its application to cases in the General Land Office. 15-195

1148. The commissioner has no authority under rule 72 to consider a showing made for, when it has been considered by the department and the application denied. 16-180

1149. In the absence of prejudice shown, it is no ground for a, that at the time of the trial the statute governing the proceedings received a construction that is no longer followed. 18-565

1150. In case of a, ordered by the department the evidence should be confined to the issue as defined in the departmental order. 22-392

1151. In case the record transmitted with an appeal is so contradictory and conflicting that a satisfactory conclusion as to real facts can not be reached, the department may, upon its own motion, order a rehearing. 33-517

1152. A motion for, filed before the General Land Office, but transmitted without action on the appeal of the other party, should be remanded for consideration of the commissioner, but, if not so remanded, may be treated as protecting the right of the applicant to be heard before the department. 18-409

1153. The transfer of a case, during the hearing, from one townsite board to another, is no ground for, where all the testimony is reduced to writing and before the board that rendered judgment. 23-578

XIII. Review.

See IX. h. HEREOF.

1154. Rule 114, regulating motions for, before the department, rescinded, and new rule substituted therefor. 18-472

1155. Rule 114 amended. 23-406

1156. Report from the local office should be received before closing a case that has been before the department. 21-496

1157. When two or more parties are each entitled to file motion for, and one of them files such motion, it should not be transmitted to the department for consideration until a report has been received from the local office as to the service of notice of the decision, and whether motion for review has been filed, within the time allowed, by the other party or parties. 37-339

1158. Motion for, is based upon some error in the findings of fact or construction of law. 13-726

1159. Its purpose is to call attention to and ask correction of errors in findings of fact or conclusions of law affecting and defining the rights of the parties. 32-269

1160. Motion for, should not be filed with motion for rehearing, but filed separately. 13-726

1161. Modification of practice in the matter of filing motions for. 15-424

1162. Instructions concerning the closing of cases on motion for, under the change of practice as directed November 15, 1892. 16-334

1163. The rule of practice relative to closing cases on, announced in *Allen v. Price*, 15 L. D., 424, did not contemplate its application to cases where an entry had been formally canceled prior to said decision. 25-377

1164. Motion for, must be accompanied by an affidavit that it is made in good faith and not for the purpose of delay. 4-252; 8-331; 9-45; 10-43, 446; 11-623; 16-87; 17-348

1165. Motion for, must be accompanied by the affidavit of the applicant or his attorney that the motion is "made in good faith and not for the purpose of delay," and this requirement is not met by an affidavit of the attorney as to the verity of the matters stated in the motion. 16-498

1166. On motion for, before the commissioner it is within his discretion to waive the requirement of an affidavit that the motion is in good faith. 12-647

1167. When two parties are adversely affected by the same decision the appeal of one will not preclude motion for, by the other. 5-410

1168. When a motion for, and appeal by the different parties are based on the same grounds, the granting of the motion suspends the appeal, and the General Land Office should pass on all issues and determine which of the parties has the superior right. 18-575

1169. The affidavit required under rule 78, accompanying a motion filed out of time, can not be taken in aid of a previous motion that is not thus supported. 13-265

1170. Due notice of application for, must be given the opposite party. 4-145; 5-382

1171. Notice of motion for, must be given all parties in interest. 24-402

1172. Notice of motion for, must be given within the time for filing the same. 5-99

1173. Where notice of a decision is given by the local office through the mails, 10 days additional will be allowed for filing motion for. 17-295

1174. In computing the time allowed for filing a motion for, where notice of the decision is given through the mail to resident counsel by the General Land Office, such notice must be regarded as served on the third day after it is mailed, and such day of service excluded. 18-478

1175. Motion for, except when based upon newly discovered evidence, must be filed within 30 days from notice of the decision. 4-11, 252; 5-17, 382; 9-360; 10-43, 413

1176. Time within which a motion must be filed, except in case of newly discovered evidence, begins to run from the date when notice of the decision is received. 13-265

1177. Time within which a motion for, must be filed begins to run from the date when service of the notice of decision is first made where such notice is served both upon the attorney and the party he represents. 14-443

1178. Motion for, based on alleged newly discovered evidence may be entertained though not filed within 30 days from notice of the decision. 12-647

1179. A motion for, not filed and served within the period prescribed by the Rules of Practice, will not be entertained against the objection of the opposite party. 11-511; 17-295

1180. Motion for, will not be dismissed on the ground of being filed out of time where the date of the service of the notice of the decision is not affirmatively shown. 12-226

1181. Rule 79 does not apply to motion filed out of the time allowed for the appeal. 14-154

1182. Rule limiting the time within which motion may be filed will be strictly enforced in contested cases. 9-668

1183. That the application for reconsideration was not filed within 30 days is immaterial where the former decision rested

upon an imperfect record showing as to the facts. 3-42

1184. Application for, is addressed to discretion of the court. 5-410

1185. Not granted unless the case is brought within the rules and principles relating to new trials in the courts. 1-209, 239; 3-537, 607

1186. Will be denied where no new question is presented for consideration. 3-557, 598; 5-438; 9-580; 12-226; 13-506, 570; 14-90; 15-195, 330; 18-479

1187. Will not be granted in the absence of specific allegations of error. 6-781; 8-331; 10-43; 11-8; 18-565

1188. Not sufficient to allege generally that the decision is not in accordance with the law and evidence; the errors of law should be specified and attention directed to the particular evidence relied upon to secure a reversal. 5-150; 9-81, 340, 503; 10-446

1189. Not granted on the ground that a reexamination of the evidence may bring about a different result. 9-580; 14-98

1190. Not granted on the ground that the decision is against the weight of evidence if there was contradictory evidence on both sides. 1-111; 5-150; 6-9, 243, 299

1191. Not granted on the ground that the decision is against the weight of evidence if fair minds might reasonably differ as to the conclusion that should be drawn from such evidence. 5-387; 8-331; 9-55, 419, 580; 10-36; 13-562, 615; 14-426

1192. On the ground that the decision is not supported by the evidence will not be granted unless it is affirmatively shown that the decision is clearly wrong and against the palpable preponderance of the evidence. 8-248, 331; 9-55, 98, 463; 13-562

1193. If allowed on the ground that the decision is contrary to the weight of evidence where there is some evidence to sustain the decision, it must appear that the latter is clearly against the palpable preponderance of the evidence. 10-487

1194. Will not be granted if the decision is warranted by evidence independently of the alleged erroneous finding of fact. 8-331

1195. Not granted in case of concurring opinions of the local office, commissioner, and Secretary, if there is evidence to sup-

port the decision and it is not unquestionably in violation of law. 6-97

1196. Reversal of concurring decisions of the local office, General Land Office, and the department on a finding of fact not justified except on a strong and clear showing. 11-618; 19-108

1197. Concurring decisions of the local and General Land Office and the department not disturbed on motion for, on the ground that the decision is against the weight of evidence, where the testimony is such that fair minds might differ. This rule is not limited to cases where the testimony is taken before the local officers. 15-196

1198. Granted on newly discovered evidence that is material to the issue. 6-243

1199. If granted on the ground of newly discovered evidence, it must appear that such evidence could not have been discovered by reasonable diligence in time for trial. 10-489

1200. Evidence not newly discovered comes too late when offered for the first time on motion for. 25-533

1201. Motion for review of a predecessor's decision will be entertained where it is alleged that newly discovered and material facts are presented which, if before considered, would have changed the judgment. 2-564

1202. On application for, evidence of record and easily to be obtained will not be considered "newly discovered." 4-511; 6-41

1203. Evidence in possession but not offered at the hearing can not be considered newly discovered. 3-104

1204. Affidavits should not be submitted with a motion for, for the purpose of supplying facts that should have formed a part of the case as presented in the first instance. 23-28

1205. Not granted on newly discovered evidence which goes only to impeach the credit or character of a witness. 8-331

1206. Evidence cumulative in character or tending to produce a conflict with that already submitted can not be accepted as proper basis for. 6-243; 9-295; 15-424

1207. On the ground of newly discovered evidence can not be granted where

the evidence is first discovered and offered by another as the basis of a contest. 16-39

1208. In support of a motion for, testimony as to facts that occurred after the hearing can not be considered newly discovered evidence. 10-43

1209. A cause of action arising after the hearing before the local office, and during the pendency of appeal therefrom, can not be made the basis of a motion for, of the departmental decision rendered on the appealed case. 24-399

1210. Application for, before the tribunal rendering the decision should be made when new matter is relied upon to set aside such decision. 8-294

1211. Errors not alleged on appeal are not grounds for. 9-581

1212. Objection to manner of taking testimony, or to affidavit of contest, comes too late when raised for first time on motion for review. 7-497

1213. Will not be granted on questions that should have been presented by way of appeal. 9-65

1214. Will not lie for consideration of a question not in issue when the original decision was rendered. 9-337; 20-535

1215. A question as to the correctness of the record comes too late, when raised for the first time on motion for. 19-473

1216. A motion for, that raises a question not in issue either at the hearing, or before the General Land Office, or the department, on appeal, will not be granted. 20-528

1217. Objection to the affidavit of contest will not be considered when raised for the first time on motion for. 7-497

1218. The sufficiency of the charge, on which a hearing has been held, can not be called in question on, if no objection thereto was made at the hearing. 24-301

1219. Questions as to the regularity of a trial will not be considered when raised for the first time on motion for. 13-269

1220. On motion for, questions will not be considered that are raised for the first time which should have been presented at the hearing. 13-615; 20-213

1221. A question not raised nor determined in the decision will not be considered on motion for. 12-503

1222. Will not be granted unless it clearly appears that manifest injustice has been done. 10-311

1223. Will not lie for review of a decision by the Secretary relating to the procedure of the Land Department in the execution of its judgment, theretofore rendered, finally defining and determining the rights of the parties. 32-269

1224. Of a decision that approves the action of the commissioner in ordering a hearing will not be granted except on the most cogent and conclusive reasons. 10-600

1225. Of a departmental decision ordering a hearing will not be granted, where the questions raised by the motion may be considered when final action is taken on the merits of the case. 17-576

1226. There is no authority in the rules of practice for, of an order of the Secretary directing a hearing. A revocation of such order should be sought through an application to the supervisory authority of the Secretary. 21-400; 26-304, 377

1227. A motion for, of a decision of the Secretary, in which he refuses to exercise his supervisory authority, is not provided for in the rules of practice, and will only be considered in cases presenting strong and exceptional reasons. 25-154

1228. Denied where it involves the reversal and disregard of repeated executive and judicial decisions and the matter has passed beyond executive control. 6-462

1229. Will not be granted where the claimant or transferee is allowed a further opportunity to support the entry, unless there is a palpable abuse of discretion as shown by the record, in directing the hearing or requiring new proof. 10-651

1230. Not warranted on the ground that a witness was prevented by intimidation from testifying fully, if the importance of the testimony is not shown; nor on the ground that applicant's attorney did not conduct the case skillfully. 10-483

1231. Refusal of officer before whom testimony was taken to grant a continuance not ground of, where exception to such action was not taken below. 7-497

1232. When a case involving purely questions of law is decided in an appellate tribunal reargument is never heard except

when based upon the suggestion of some member of the court who concurred in the judgment. 2-845

1233. Alleged error in construing a statute or dereliction in respect of the consideration given it is not ground of review. 2-845

1234. That a decision has been overruled is no ground for, if the decision has become final as between the parties. 10-413

1235. A decision of the department will not be reviewed on the ground that the departmental rule followed therein has been reversed by the Supreme Court, where said decision, when made, was in accord with the rulings of the department. 21-128

1236. Of a departmental decision affirming the action of the General Land Office will not be granted where prior to the appeal the appellant had acquiesced in the adverse judgment and subsequently complied with its requirements. 10-439

1237. Right of, waived by electing to proceed under the decision. 4-144

1238. Promulgation of a departmental decision not subject to review in the General Land Office. 15-190

1239. Decision denying a writ of certiorari not subject to. 8-423

1240. Motion for, of decision denying a writ of certiorari should be treated as a petition for exercise of the Secretary's supervisory authority. 17-108, 111

1241. Decision of board of equitable adjudication not subject to. 1-411

1242. Stranger to record will not be heard on review. 3-300; 14-451

1243. Not granted to transferee except on such showing as would entitle the entryman to be further heard. 5-589; 9-580; 11-623

1244. Motion for, filed by a transferee must set up facts sufficient to show that he is entitled to such hearing. 11-194

1245. Transferee who applies for, alleging that the decision is not final as to him for want of notice, must show that a statement of his interest was on file in the local office. 14-126

1246. Will not be granted on the application of a transferee who, with notice of the pendency of the case, fails to disclose his interest therein while it is under consideration. 10-81

1247. A motion for, filed by an alleged agent and attorney of a State will not be entertained where such attorney has not complied with the regulations in regard to the admission of attorneys at law to practice before the department, and has shown no authority to represent the State either as attorney or agent. 24-525

1248. Allowed on showing that notice of decision was not received. 4-242

1249. Not granted except on full hearing of all parties. 4-84, 106

1250. On motion for, the department may examine any material question which it appears from the record was not considered in the original decision. 8-400

1251. No ground for, that the decision rendered was embraced in a number of cases considered at the same time and covered by the promulgation of one decision. 13-503

1252. On motion for, the facts and issues in another and independent case pending in the General Land Office can not be considered by the department. 9-497

1253. Evidence submitted under a second contest allowed before final disposition of the first can not be considered in support of a motion for, of the decision rendered in the prior case. 23-377

1254. On motion for, it will not be presumed that papers improperly in the record were considered if the conclusion reached was warranted by competent evidence. 9-419

1255. In consideration of motion for, it will be presumed that record facts as found in the Government archives, as well as all facts presented by the parties, were within the Secretary's knowledge, and were by him considered in his former decision. 17-79

1256. Motion for, can not be entertained by the commissioner after appeal from his decision. 3-539; 9-165

1257. Motion for, can not be entertained by the commissioner after an appeal has been taken from his decision unless the appeal is withdrawn and made of record. 12-80

1258. Where the motion for, is lost or mislaid a copy thereof may be substituted. 12-220

1259. Request for, based on *ex parte* affidavits after judgment received with caution. 3-344

1260. Where the Secretary dismisses a motion for review the case is not held open for 30 days thereafter under rule 76. 3-595

1261. Pendency of motion for, excludes intervening claims. 9-192; 12-529; 13-429

1262. A motion for, filed within time operates as a supersedeas, but if not filed within time the execution of the judgment can only be stayed by the direct action of the Secretary. 12-45

1263. On denial of a motion for, of a decision denying the reinstatement of an entry the land is at once open to entry. 20-391

1264. Motion for, does not operate to reserve the land involved, but subsequently acquired rights are subject to the final disposition of the motion. 13-182

1265. During the pendency of a motion for, before the department, the General Land Office is without jurisdiction to make disposition of the land involved. 17-8

1266. Denial of a motion terminates on the date of such decision all rights reserved by the pendency of the motion, and the judgment under consideration is thereupon final. The only right remaining to the losing party thereafter is an application to the supervisory authority of the department. 15-421

1267. Motions for, are disposed of as soon as a proper consideration thereof will admit. 9-295

1268. Motions for, usually take precedence of appeals on the regular docket. 9-295

1269. Application for, should be acted upon without prejudice to rights recognized in the first decision. 5-608

1270. Motion for, before the department must be filed in the General Land Office. 3-595

1271. A motion for the review of a departmental decision filed in the General Land Office should be submitted to the department for its action thereon. 13-33

1272. Rule 114 requires but the transmission of the papers filed in support of the motion. 4-275

1273. The Commissioner of the General Land Office not authorized to review the decision of his predecessor. 3-256

1274. The commissioner has no authority to entertain a motion for, of a decision that has become final for want of appeal. 20-490

1275. The commissioner has authority to review a decision of his office *sua sponte* and without notice to the parties where such action is required to put the office in accord with its own record. 7-13

1276. Commissioner may review his predecessor's decision where notice of such decision has not been given. 7-42

1277. A final decision of the General Land Office should not be reopened by the commissioner without prior notice to the adverse party in interest; but if such action is thus taken and the party adversely affected thereby is then notified of his right of appeal therefrom, such notice should be treated as a rule to show cause why the judgment, as modified, should not stand, and his appeal as the answer thereto. 22-600

1278. The commissioner may review and revoke a decision of his office that is not final on the merits and from which no appeal will lie. 22-159

1279. The commissioner may reconsider the decision of a predecessor in a case where there has been no judgment on the merits. 3-50

1280. While the subject matter of a case remains within the jurisdiction of the General Land Office the commissioner has authority to revoke, on his own motion, and for due cause, a former decision therein, and render a judgment in accord with the record. 19-312

1281. A petition for, will not be entertained, where it is in effect an application for reinstatement of an entry that was canceled under a ruling of the General Land Office not called in question when the case was before the department on the appeal of the petitioner. The application in such case should be addressed to the General Land Office. 28-451

1282. On motion for, the department may reconsider a decision, rendered on an incomplete record, where jurisdiction of the land remains with the department, and

it appears that the rights of others, not parties to said proceedings, have been prejudiced by subsequent departmental action based on said decision. 19-446

1283. A decision rendered on an incomplete record will be set aside, where, on application for relief under amended rule 114, it appears that such action is required by the completed record. 19-584

1284. Prior to the issuance of patent, the Land Department may reopen a case, to correct an error in the decision thereof, and readjudicate the same, after due notice to the parties. 24-280

1285. Where patent inadvertently issued during the pendency of a motion for review, the institution of suit for cancellation of such patent will not be recommended unless it appear that the motion is based upon grounds which would have warranted entertainment of the same had it been regularly considered and acted upon prior to issuance of the patent. 33-295

1286. In the absence of motion for, the department has authority to correct its own mistakes while the subject matter is yet under its own jurisdiction. 15-443

1287. Secretary's decision dismissing a timber-culture contest, made on an imperfect record, will be reviewed, and any consequent error rectified. 2-247

1288. On application of a party in interest the department may reform its finding of facts in a previous decision to accord with the record in the case, where such action seems requisite for protection of the applicant, though the judgment as rendered may not be affected thereby. 24-245

1289. Application for, which calls for exercise of the supervisory authority of the Secretary on behalf of a stranger to the record will not be entertained where such applicant can assert his rights through regular proceedings instituted for that purpose. 11-403

1290. An allegation of amicable adjustment prior to judgment, made on motion for, may be properly treated as the basis for further inquiry and decision in accordance therewith. 22-148

1291. The Secretary may, in the exercise of his supervisory authority, by due order,

make a petition for rereview act as a super-sedeas, but in the absence of such order, it should not be so treated in the General Land Office. 26-441

1292. Rule 114 amended, providing that second motions for, shall not be received or filed. 17-194

1293. Motions for rereview of Secretary's decision must be filed in the Secretary's office; circular of October 18, 1894. 19-306

1294. Petitions or motions of rereview should not be filed in the General Land Office, but should be addressed to the Secretary in the form of application for the exercise of his supervisory authority, on grounds not covered in the former consideration of the case. 25-292

1295. Motions for second reconsideration should not be allowed. 4-383; 8-111

1296. After disposition of a case on review, suggestions of fact or law not previously considered may be presented by petition for such action as may be deemed appropriate. 8-111, 443

1297. Petition for rereview will be denied unless it presents some new question or suggests ground for the exercise of supervisory authority. 8-443

1298. A petition for rereview that presents no new question, that does not assert the existence of newly discovered evidence, or that the former decision was secured through fraud on the part of the successful party, or otherwise, and is not filed within a reasonable time after the denial of the motion for review, does not present a case where the supervisory authority of the Secretary can be properly exercised on behalf of the petitioner. 25-444

1299. Petition for rereview will not be entertained unless it sets up new matter for consideration. 11-314, 349, 480

1300. Rereview only granted under exceptional circumstances and on special application, and not secured indirectly through subsequent proceedings in the case. 12-364

1301. A petition for rereview will not be granted unless it presents facts not previously discussed or involved in the case 9-93, 588; 12-446

1302. Petition for second, should be limited to the suggestion of new facts or questions not before presented. 9-295

1303. Where a party has had a full hearing with decision on motion for review his case will not be again taken up on the technical plea that the right of appeal was denied. 4-227

1304. Not a proper ground for rereview that the decision on review was prepared by the writer of the original decision. 8-111

1305. It is not a good ground for rereview that the oral argument on review was heard by the same official that rendered the decision in the first instance. 9-93

1306. A petition for rereview that does not suggest new facts or law not theretofore discussed will be sent to the files without further action. 17-101, 511

1307. On motion for rereview questions can not be raised outside of the issues involved in the case when formerly before the department. 17-60

1308. A motion for rereview of a decision denying a writ of certiorari should be treated as a petition asking for exercise of the Secretary's supervisory authority. 17-108

1309. A motion to reconsider a decision that was rendered on review and reversed a former decision, is a motion for rereview and must be disposed of under amended rule 114. 18-408; 19-104

1310. After the denial of motion for, the department will not reopen the case for further investigation except upon such a showing as would warrant a court of equity in granting relief against the judgment of a court of law. 22-671

1311. After a case involving conflicting claims to a tract of land has been closed, the Secretary, in the exercise of his supervisory power, will, upon reopening the case for further consideration, be governed by the same rule, in determining the rights of the parties, as is observed by the courts in a proceeding to charge the holder of a patent from the United States as trustee; that is, it must not only be shown that the party to whom the land has been awarded is not entitled to it, but

that the party attacking his claim has the better right thereto, and that if the law had been properly administered, the land would have been awarded to him. 34-82

PREEMPTION.

See ALIENATION, VII; APPLICATION, V; EQUITABLE ADJUDICATION, V; FILING; FINAL PROOF, XIV; RESIDENCE, IV; SETTLEMENT, IV.

- I. Generally.
- II. Land Subject to.
- III. Qualifications of Entryman.
- IV. Section 2260. Revised Statutes.
- V. Transmutation.
- VI. Heirs, devisees, etc.
- VII. Entry.

I. Generally.

1. Is the right to hold land before payment therefor upon promising to buy the land at a stipulated time, together with the right to purchase at such time; it is initiated by settlement and filing a declaratory statement and has had its full life when the stipulated time of purchase arrives. 2-855; 5-274, 538; 9-175

2. The term "preemption" is not limited to the privileges conferred by the general statutes, but may be applied to other cash purchases where the preferred right of purchase is restricted by conditions similar to those imposed by the preemption law. 13-59, 82; 22-131

3. In general terms, is a special preference given to a claimant by which he may hold to the exclusion of others, dependent upon the performance of conditions. 3-71, 433; 5-555

4. The word "preemption" is of broad significance and used in State statutes and other laws before incorporated into the land laws. 3-71

5. Repeal of the act granting the right of, does not affect a claim lawfully initiated prior to said repeal. 15-482; 16-8, 54

6. In case of a filing made after repeal of the preemption law, the burden rests with the preemptor, as against an adverse claimant, to show settlement prior to said repeal and residence as required by law. 23-189

7. The repealing act of March 3, 1891, does not protect the settlement of a preemptor on land not subject to settlement. 15-179

8. A contestant who begins his suit prior to repeal of the preemption law, but does not secure a judgment of cancellation until after said repeal, has no right that falls within the protection extended by the repealing act to claims "lawfully initiated." 17-149

9. A contestant who secures cancellation of an entry on a contest begun prior to repeal of the preemption law, but not concluded until thereafter, acquires thereby no right of entry under that law, if, prior to said repeal, he had not initiated a valid settlement claim to the land. 26-433

10. A contestant who secures cancellation of an entry prior to repeal of the preemption law, but does not settle on the land until subsequent thereto, has no right that can be protected under the terms of said repeal. 20-181

11. A contestant who secures a preference right of entry prior to repeal of the preemption law, and is at such period residing on the land with intent to preempt the same, has a claim thereto lawfully initiated, that is protected under the terms of said repeal. 20-396

12. Law of, in the States admitted into the Union by act of February 22, 1889, not repealed by section 17 of said act. 11-307

13. A conditional claim is unknown to the law. 1-404

14. Recognizes settlement on land subject thereto as the legal basis of a claim against the United States. 3-272, 281; 5-274, 289, 538

15. Good faith in settlement is the fundamental principle upon which the right of, rests. 6-285

16. Based on settlement and filing for the benefit of another void *ab initio*. 3-488; 5-52

17. The phrase in "accordance with the general provisions of the preemption laws," in section 2283, R. S., construed as requiring compliance with said laws in the matter of settlement and residence. 6-600

18. No validity in the filing and settlement of one who has exhausted his preemptive right. 4-560; 5-16

19. Benefits of, not secured by mere occupancy of public land. 1-453

20. Under the act of June 21, 1860, the occupancy of public land for a mail station does not form the basis of a preemptive right. 10-167

21. Right of, not acquired by the purchase of the possessory right of a prior preemption claimant. 2-559; 3-100; 8-623; 10-504

22. The purchase of improvements already upon the land equivalent to making the same. 1-137; 4-56, 62, 257

23. Cultivation in person not requisite. 4-56

24. Right of, as against adverse claims rests upon priority in settlement. 4-423

25. Right and extent of, determined by settlement. 11-72

26. Where rights and equities are equal the first in time has the better title. 1-404; 5-643

27. No vested rights are acquired by the settler prior to actual compliance with the law, payment of the purchase price, and due receipt given therefor. 5-442; 8-269; 9-41

28. Filing and settlement do not confer a vested right upon the settler that will prevent subsequent disposition of the land by Congress. 16-526

29. The right to a patent once vested is equivalent to a patent issued, and the final certificate obtained on the payment of the money is as binding upon the Government as a patent. 3-23

30. Acceptance of final proof and payment by the local office does not preclude inquiry into the claim of the preemptor by the Land Department. 9-316

31. Final proof and payment only secure the right to patent in event it is finally determined that the facts warrant its issuance. 8-269

32. A preemptor who has complied with the prerequisites of the statute is entitled to a certificate of entry. 2-167

33. The rights of the purchaser are established on final proof and payment, and no failure of the district officer to act thereon can affect the same. 3-172; 7-455; 8-268; 14-349

34. Right not lost through recognizing the title of another when such action was the result of erroneous decisions of the Land Office and the preemptor reasserted his claim as soon as he learned that the land was open to entry. 7-92

35. The preemptive right is exhausted where the settler files for a tract and subsequently abandons the filing and enters a portion of the land under the homestead law. 12-351; 23-539

36. Right of, exhausted by an entry made without requisite compliance with law. 11-290

37. Default in compliance with the requirements of the law can not be cured after entry. 11-290

38. Voluntary abandonment of claim duly protected by settlement and filing precludes a further exercise of the right. 6-617

39. Failure to contest an adverse claim which could have been contested successfully, with abandonment of the land, exhausts the preemption right. 2-573

40. Final proof and payment for part of the land covered by a filing is an abandonment of the remainder. 16-251; 17-66

41. Right exhausted by the entry of 80 acres. 1-485; 7-261

42. Right exhausted by an entry of 40 acres. 7-204

43. Right of, once exhausted, can not be restored except by Congress. 5-643

44. Right can not be maintained by one who is at the same time claiming another tract under the homestead law. 7-225; 8-200; 9-63; 13-617

45. Right of, not defeated by making a homestead entry pending consummation of the preemption claim where residence on and improvement of said claim were maintained and said entry was subsequently relinquished. 9-129

46. Right of settler not defeated by a former unperfected homestead of the claimant, not canceled nor relinquished, if he has in fact abandoned the land covered by his homestead entry. 13-702

47. Claim finally concluded if unsuccessfully set up to defeat the final proof of another. 5-260

48. Entry canceled for failure to comply with law in the matter of residence

can not be reinstated on a subsequent showing of residence and cultivation.

12-418

49. In the absence of due compliance with law the right of purchase is defeated by an intervening adverse right. 13-663

50. Suspension of plat considered as an excuse for noncompliance with the law.

4 333

51. In the presence of an adverse right, failure to make payment for offered land within 12 months from settlement defeats the right of.

10-387

52. One who fails to make final proof within the statutory life of the filing can not be permitted to perfect his claim in the presence of an intervening adverse right.

21-514

53. A contest having been decided and the right of one of the parties to perfect his claim by the payment of the purchase price within a specified period having been recognized, his failure to make such payment within said time will not subject his claim to an intervening adverse right where the delay is explained and it appears that he tendered payment with his original submission of final proof.

22-29

54. Preemptor having failed to prove up within statutory period may purchase in the absence of adverse claim.

3-272

55. An intervening settlement right set up to defeat a preemptor in default as to proof and payment within the statutory period must be based on substantial acts of improvement.

8-417

56. Right of, not defeated by the intervention of an adverse claim on failure to make proof and payment for unoffered land within the statutory period unless such claim is made in good faith by one who has complied with the law.

10-612

57. Claimant in submission of final proof may rely on the certificate of the register as to the "offered" or "unoffered" character of the land.

18-373

58. Failure to make proof and payment for "offered" land within the statutory period defeats the right of, in the presence of adverse claim, even though the failure may be due to an erroneous statement in the receipt issued by the local office that the land was "unoffered."

3-46; 15-218

59. Right on unoffered land as defined by the act of 1841 and extended to lands

in California by the act of March 3, 1853, is not defeated by failure to make proof and payment prior to the day fixed for public offering of the land where said land is subsequently withheld from such sale.

12-272

60. Right not defeated by failure to make proof and payment prior to a day erroneously appointed for the public offering of the land where such tract, on the discovery of the error, is subsequently withheld from sale.

11-445

61. Failure to assert any claim prior to the date of offering will not defeat the right where the tract is not sold at said offering nor the sale delayed through the fault of the settler.

3-264

62. Failure to submit final proof, and make payment for the land, within the statutory life of a filing on unoffered land, does not defeat all rights under the filing, but subjects the claim to any legal settlement claim that may intervene.

25-384

63. Preemptive rights, under a filing for a tract of unoffered land, are not terminated by a proclamation of offering and sale, where the land is subsequently withheld from such offering.

29-613

64. Failure to purchase within the statutory period does not necessarily forfeit the claim as against the Government, though subjecting it to the entry of any other purchaser.

9-221

65. Land "settled and improved" by a preemptor only becomes "subject to the entry of any other purchaser" where it was open to private entry at date of settlement.

8-346

66. Offered land is subject to the entry of other purchasers after laches in filing by the settler, but is not forfeited as to the Government.

3-119

67. The adverse claim of a railroad company is not that of "any other purchaser."

5-474; 6-520; 9-221

68. Not defeated by homesteader who alleges residence within less than six months after entry and fails to show the same.

5-440

69. Good faith to be determined from the circumstances surrounding each case.

3-110, 411; 4-80

70. Right not defeated by the fact that through change of circumstances the preemptor prior to final proof forms the in-

tent to sell, where previously he has complied with the law in good faith. 12-20

71. An intention to remove from the land on the submission of final proof may be entirely compatible with good faith. 8-508

72. Good faith in the matter of improvements not impeached though the money therefor may have been advanced by another. 3-392

73. Circumstances as well as time recognized in the development of the settlers' good faith. 1-446

74. Right to make entry recognized on return to land after absence. 1-435

75. A pretended settlement on timber lands for the purpose of securing the timber will not support a preemption claim. 9-573

76. Under act of August 4, 1882, opening to disposition lands in Fort Larned Military Reservation. 6-600

77. Requirements with respect to settlement, residence, and improvement applicable to lands formerly in Fort Larned Military Reservation. 11-290

78. Entry can not be allowed under section 2, act of October 1, 1890, except on proof of continuous residence for a period of not less than three months prior thereto. 25-367

79. The preemption laws do not include Indians. 1-491

80. Right to take timber from claim permitted for necessary improvements. 4-289

81. A preemption claim is waived by a subsequent application to enter the land under the homestead law. 2-504

82. No right under the act of April 22, 1876, can be acquired by an unauthorized settlement. 15-487

II. Land Subject to.

83. Land settled and occupied for the purposes of "trade and business" at the date of entry is not subject to. 5-182; 6-746

84. The "trade and business" contemplated in section 2258, R. S., must be actual. 3-282

85. Right can not be exercised upon land included within the corporate limits of a town. 15-124

86. Section 2258, R. S., excludes "lands included within the limits of any incorporated town or selected as the site of a city or town" and a declaratory statement for such land, and final proof thereon, should not be accepted where no proceedings to subject the same to the settlement laws, under the act of March 3, 1877, were instituted prior to the repeal of the preemption law. 30-252

87. Right will not be recognized, where prior to the date of preemptors' settlement and filing the land was occupied and improved under a townsite settlement claim, and such occupants are seeking to make townsite entry, without affording them opportunity to be heard. 28-382

88. Right can not be exercised by one who enters upon public land for the purpose of "trade and business" and makes such use of said land. 12-647

89. Right can not be exercised by one who is using the land for purposes of trade only. 13-665; 16-209

90. Land settled upon in good faith for agricultural purposes, and so used, is not excluded from entry by the fact that the preemptor erects and operates a sawmill thereon where the use of the lumber is restricted to the land in question. 15-108

91. Claim of, initiated in good faith upon unoccupied and unsurveyed land is not defeated by the subsequent occupancy of others for purposes of trade, nor by the fact that the preemptor himself engages in business on said land. 15-41

92. The exemption under the head of "known mines" is applicable only to conditions existing at date of sale. 6-393

93. An entry, covering land mineral in character, and made with the knowledge of prior mineral location thereon, and of the fact that the land was at such time regarded in the vicinity as valuable for mineral, must be canceled as having been allowed for "known" mineral land. 23-35

94. Lands containing known mines excepted from. 6-393; 7-73

95. In order to defeat an entry on the ground of the mineral character of the land, it must be shown that the mineral was known to exist at date of entry. 13-108; 27-1

96. Where an entry is attacked on the ground that it covers mineral land it is not a sufficient defense to show that the land was not thus known to the claimant at time of entry if it was then so known by others and the ore was then exposed to such an extent that one who has been on the land could not be ignorant of the existence of the mineral. 13-517

97. The phrase "known mines," as used in the preemption law, construed. 7-73

98. Land containing stone that is useful for general building purposes only is not exempt from, as mineral land. 12-1

99. Mineral lands in the State of Minnesota not excluded from. 25-157

100. Right not acquired by settlement upon land under control and occupation of another. 4-124

101. Right not initiated by forcible intrusion. 3-278;
4-140, 388; 5-377; 7-68, 92

102. Possession under an invalid adverse claim of a part of the land covered by the filing does not interfere with the constructive possession of the preemptor or his right to the entire tract covered by the filing. 9-344

103. The fact that part of the land, including all the improvements, is within the inclosure of another, does not necessarily impeach the good faith of the preemptor. 17-129

104. The possibility of one party taking the improvements of another is within the scope of the law. 1-423

105. Right can not be exercised on land embraced within an Indian reservation. 12-563

106. Right does not extend to land occupied under military authority. 5-376

107. Not precluded by abandoned town-site settlement. 5-180

108. Land not excluded from, because its altitude is such as to prevent residence throughout the entire year. 6-811;
7-57; 9-450

109. Right extends to timberlands, but the final proof should show that the land was taken in good faith for a home and not for the value of the timber alone. 6-691; 8-641; 9-139

110. Lands chiefly valuable for timber may be taken under the preemption law if

the claimant's good faith is clearly manifested. 11-7

111. In determining the good faith of a claim asserted for lands subject to entry under the timber and stone act of 1878 the character of the land may be properly considered. 11-145

112. Lands embraced within the forfeiture act of September 29, 1890, are not subject to. 16-50

III. Qualifications of entryman.

113. Proof of the preemptor's qualifications is furnished by the affidavit required by section 2262, R. S. 13-378

114. Claimant must have requisite qualifications at settlement. 4-116

115. A preemptor who enters into a written contract prior to filing, by which he agrees to convey part of the land to another on securing title, is disqualified as a purchaser. 8-269; 15-201

116. Claim initiated and maintained in the interest of another is illegal and the filing thereunder must be canceled. 11-548

117. Preemptor at time of filing was not qualified, but as the disqualification had ceased to exist prior to the inception of an adverse right he was allowed to purchase. 3-500

118. Compliance with the law allowed to be shown on the removal of statutory disqualification. 4-420

119. Daughter of an alien, deceased, who was a minor when her father declared his intention, may exercise right of preemption. 2-611

120. The son of an alien, living, whose father has only declared his intention, and who was a minor at immigration, is not qualified to make entry without filing his own declaration of intention. 2-612

121. A declaration of intention to become a citizen filed by the father during minority of the son does not qualify the latter in the matter of citizenship. 4-116; 12-637

122. Settlement and filing before declaration of intention are of no legal effect; where filing is so made a subsequent settlement after declaration of intention will support the filing in the absence of an intervening adverse claim. 2-627

123. Failure of preemptor to declare his intention of becoming a citizen prior to

filing may be cured before the intervention of an adverse right. 3-452; 7-471

124. One holding title under a private land claimant to a larger amount of land than he would be entitled to take as a pre-emptor is not thereby debarred from entering 160 acres of such land when it is restored if he is then a settler thereon. 14-626

125. Right exhausted by one who files before declaring intention to become a citizen, and, in the absence of an adverse claim, subsequently makes such declaration. 6-15

126. A married woman is not entitled to make entry. 2-600

127. Right can not be exercised by a married woman living apart from her husband under a voluntary agreement of separation. 14-459

128. Right may be exercised by a married woman as the "head of a family" where it appears that the husband and children are actually dependent upon her for support. 13-539

129. Right as the "head of the family" can not be exercised by a married woman who voluntarily leaves the home of her husband, even though she take the children with her. 13-579

130. May be made by a deserted wife as head of a family. 2-312; 5-42

131. An entry by a divorced woman will not be allowed where it appears she is not the head of the family and that the divorce was collusively obtained for the purposes of the entry. 1-421

132. A divorced woman can not claim the benefit of acts performed by her former husband, but must rely on her own compliance with law as a single woman or head of a family. 1-401

133. A single woman who marries after filing declaratory statement and prior to final proof defeats thereby her right of purchase. (See 10-629.) 3-384; 4-70; 7-230

134. Entry of married woman who had complied with the law and published notice of final proof prior to marriage sent to the board of equitable adjudication. 1-460; 9-215; 10-166

135. Entry by married woman who, prior to marriage, had complied with law and

tendered proof may be equitably confirmed. 8-433

136. Entry in good faith by a married woman who, prior to marriage, had fully complied with the law in the matter of settlement, residence, and improvements may be equitably confirmed. 10-629

137. Entry in good faith by married woman may be equitably confirmed where due compliance with law prior to marriage is shown and the entry is allowed with full knowledge of the facts. 15-230

IV. Section 2260, Revised Statutes.

138. Right of preemption can not be exercised by one who owns 320 acres of land, and a pretended transfer of title will not remove the disqualification. 10-461; 12-103

139. Qualification of preceptor not affected by ownership of land as a trustee. 1-462; 14-215

140. The first clause of section 2260 does not cover land held jointly by the preceptor and his wife in Dakota. 4-432

141. The proprietor of 320 acres can not render himself a competent preceptor by conveyance of 1 acre to his infant child. 3-56

142. The inhibitory provisions of the first clause of section 2260 extend to one who holds under a contract of purchase, though the payments thereunder have not been completed at the date of settlement on the claim. 16-562

143. Under the first clause of section 2260, one who owns 320 acres is not entitled to the right of, and such inhibition extends to ownership under equitable title. 13-95

144. A contract for the purchase of land does not bring the holder within the inhibition of section 2260, where the title is not in the vendor. 14-313

145. An allegation that one is not disqualified through the ownership of other land, in that a part of said land had been sold prior to final proof, must fail if the good faith of the alleged transaction is not made apparent. 12-103

146. Whether an entry is in violation of said section must be determined by the circumstances in each case and by the intentions of the claimant. 1-492

147. To disqualify a settler under the second clause of section 2260 it must appear that he abandoned land of his own with the purpose of residing on public land in the same State. 15-85

148. The inhibition of section 2260 does not apply to one who removes from a completed homestead to a timber-culture claim and changes the same to a preemption, where it is apparent that at the time he moved to said land he did not intend to acquire title thereto under the preemption law. 15-161

149. A settler who removes from land of his own to another tract and makes homestead entry thereof may relinquish the same and file therefor under the preemption law if such action is in good faith and not for the purpose of evading section 2260. 16-85

150. Claim of one who removes from land of his own to settle on public land in the same State invalid. 1-406; 10-326; 17-41

151. The prohibition against persons who quit residence on their own land is not restricted to those who hold legal title, but includes those who hold under equitable title. 2-616;

6-792; 9-619; 10-208, 326; 13-95

152. Removal from land held under contract of purchase is within the second inhibition of section 2260. 7-472

153. Joint ownership in land is sufficient under section 2260 to preclude removal therefrom to reside upon public land in the same State or Territory. 8-367

154. One who removes from land in which he owns an undivided interest to settle on public land in the same State or Territory is within the second inhibition of section 2260. 9-605; 13-248

155. One who removes from land acquired under the homestead law to reside on public land in the same State or Territory is within the second inhibition of section 2260. 5-413; 7-195; 20-64

156. Removal from a homestead after submitting final proof, though prior to issuance of final receipt, is within section 2260. 9-619

157. That the homestead was under mortgage at the time of removal will not

relieve the preemptor from the statutory inhibition. 7-195

158. The second inhibition of section 2260 is applicable though removal is from land encumbered by mortgage. 10-447

159. One who removes from his own home in a city is not disqualified under the second clause of section 2260. 1-490; 6-407

160. The ownership of city property, and removal therefrom, does not bring a preemptor within the second clause of section 2260. 17-337

161. In cases arising under the second clause of section 2260, the character of the land from which the removal is made and the purpose for which it was used may be considered. 9-512

162. The disqualification imposed by the second clause of section 2260, can not be avoided on the plea that the land claimed was not in fact "public" at the date residence was established. 16-280

163. Bar under second clause of section 2260 removed by deed in good faith from husband to wife. 4-355, 432

164. Sale from husband to wife made in good faith prior to establishment of actual residence removes the bar under the second clause of section 2260. 8-502; 12-244, 455; 17-381

165. The second inhibition of section 2260 does not apply to one who, prior to settlement or filing, sold in good faith that portion of his homestead on which he formerly resided. 8-132

166. In determining whether a preemptor is disqualified under the second clause of section 2260, his relation to the land formerly owned must be considered with respect to the date of establishing actual residence on the preemption claim, and not with reference to the date of settlement thereon. 12-529

167. The inhibition in the second clause of section 2260 is against one who abandons residence on his own land "to reside" on public land, and does not apply if the preemptor had in good faith sold the land on which he formerly resided before establishing actual residence on the preemption claim. 3-500;

8-502; 12-244, 455

168. In applying the inhibition in the second clause of section 2260, the presumption of good faith attending the exercise of a legal right must be given due weight. 6-35

169. A pretended transfer of land from husband to wife will not defeat the inhibitory provisions of the second clause of section 2260. 7-69, 513; 9-463

170. The fact that an intending preemtor divests himself of title to land upon which he is then residing on the very day he alleges settlement on other land is a circumstance sufficient to warrant a doubt as to his good faith. 6-422

171. Where one owned land (homestead after final proof) in the same territory and made a deed of it to another prior to settlement, but did not deliver the deed until after settlement, he was not a qualified preemtor. 2-579

172. Second inhibition of section 2260 not applicable to one who had in good faith prior to settlement disposed of the land then owned by him, though a formal deed was not executed until after settlement. 7-436; 13-375

173. A subsequent sale of the homestead from which the preemtor removed will not relieve him from the inhibition in section 2260. 6-767

174. Temporary removal prior to establishment of residence on the preemption claim does not take such claim out of the inhibition in the second clause of section 2260. 3-56; 10-117; 11-539, 553

175. One who has not, within a year prior to filing, made his home on other land belonging to him in the same State is not within the second clause of section 2260. 6-287

176. The second clause of section 2260 presumes an actual prior residence of the same character that the preemption law requires. 4-198

177. Filing and entry of one who removes from land of his own to settle on public land in the same State exhaust the right of. 5-413

178. A settler who has received final homestead certificate is not within the second inhibition where a subsequent survey brings his improvements within the

lines of an adjacent tract and he files therefor under the preemption law.

14-309; 19-166

179. Suit requested for recovery of title where patent has issued to a preemtor that removed from land of his own in the same State to establish residence on the claim. 20-508

V. Transmutation.

180. Should not be transmuted to a homestead without notice to adverse claimant. 14-120

181. There is no qualification of the provision allowing one to homestead land "upon which such person may have filed a preemption claim"; the right to transmute is incident to a valid preemption right, and when exercised relates back to the date of the preemtor's settlement. 2-635; 9-32

182. Right of transmutation after the filing has expired is not defeated by an intervening entry made during the pendency of final proof proceedings on the part of the preemtor and with full knowledge of his existing *bona fide* relation to the land. 9-305

183. The right of a preemtor to transmute is not necessarily defeated by failure to take such action until after expiration of the statutory life of the filing, and the intervention of an adverse claim based on an entry made within the life of the filing and with full knowledge of all the facts. 17-547

184. Right to transmute can not be exercised if title to the land can not be secured by applicant under the preemption law. 16-331

185. The right of transmutation accorded to one who has previously had the benefit of a homestead entry extends only to claims that can be perfected under the preemption law. 15-525

186. A settler whose claim is initiated prior to the act of March 2, 1889, may transmute his filing into a homestead, although he has already perfected title to another tract under the homestead law. 8-422; 9-556; 10-634; 12-361; 13-576; 16-386

187. Right of preemtor who initiates a claim by settlement prior to act of March

2, 1889, to transmute is not defeated by the fact that his declaratory statement erroneously shows his settlement to have been made after said act. 16-517

188. A claim initiated after the act of March 2, 1889, can not be transmuted thereunder by one who has had the benefit of a homestead entry. 14-252; 26-267

189. The right of a settler to change his claim to a homestead under the act of March 2, 1889, where initiated prior to said act, is not affected by the fact that the right of the settler was involved in a suit that was not finally determined until after said act. 21-333

190. Transmutation of a filing exhausts the preemptive right. 6-103, 570, 602; 10-188, 493; 11-322; 19-111

191. Transmuted to a homestead entry under which title is perfected exhausts the preemptive right though such filing is made prior to adoption of the Revised Statutes. 11-322

192. Transmutation of a claim for 160 acres to a homestead of less amount is an abandonment of the former claim and exhausts the preemptive right. 12-351

193. Right is exhausted by transmutation even though title is not acquired under the homestead entry. 15-402

194. Right of transmutation is dependent upon validity of the preemption claim. 4-561

195. Invalid claim not strengthened by transmutation. 4-561; 5-15

196. The right of a preemptor, who is in default in the matter of making final proof, to transmute his claim can not be defeated by an intervening entry based on preliminary papers executed while the land is not subject to appropriation. 20-225

197. Filing on school section in California may be transmuted to a homestead. 3-229

198. A preemptor in Kansas having become insane after filing and three years' residence, the wife's homestead entry in her own name was, in view of the local law, treated as a transmutation and credit allowed for the residence. 3-64

199. An application by a single woman to transmute a preemption claim to a homestead is not defeated by her subse-

quent marriage where it appears that she was duly qualified at the date of her application. 17-207

200. The right to transmute a filing to a homestead entry does not extend to the widow or heirs of the preemptor. 3-273

201. May be transmuted and final proof offered the same day. 6-379

VI. Heirs, Devisees, etc.

202. Entryman can not by devise defeat the right conferred by statute upon heirs. 6-30

203. The administrator or heirs may complete the claim of the deceased preemptor. 3-274

204. Administrator may file requisite papers and perfect claim for benefit of heirs where settler dies prior to survey of the land. (*Buxton v. Traver* cited and distinguished.) 16-161; 22-258

205. No right is acquired by settlement on reserved land, and if the settler dies while the land is under reservation his heirs have no right that can be perfected under section 2269, R. S., after the land is restored to the public domain. 11-477

206. Right can not be acquired by settlement and filing on land withdrawn for the benefit of a railroad grant; and if the settler dies before the land is restored to the public domain there is no preemptive interest to descend to the heirs. 13-432

207. Where an application is erroneously rejected because of supposed conflict with a railroad grant, and the applicant had fully complied with the law and earned title prior to his death, his declaratory statement will be considered as having been filed when tendered, and his heirs will be allowed to perfect the claim for their own benefit. 32-243

208. The heirs of a settler have no right that they can perfect where the decedent acquired no right in his lifetime. 15-487

209. Guardian or minor heir may file the necessary papers. 4-139

210. Heirs of a deceased preemptor are entitled to a reasonable period within which to take action against an adverse claim. 13-594

211. Heirs may enter within time accorded the preemptor. 5-454

212. The heirs of a preemptor are not estopped by the action of the widow in recognizing the adverse claim of another. 9-221

213. Where a preemptor dies leaving an unperfected preemption claim it is lawful for the minor heirs, acting through their guardian, to transmute the filing to a homestead entry. 20-409

214. Right of heir to submit proof under section 2269 is not defeated by the fact that he may have sold his interest in the land. 14-468

215. Heirs of a deceased preemptor entitled to be heard as against an adverse claimant. 8-405

216. A successful contest against a homestead entry, embracing land covered by a prior preemption filing, will not defeat the right of a minor claimant under the preemption filing to perfect his entry if, prior to conclusion of said contest, application is made to complete the preemption claim, and it appears that contestant had not made settlement on the land at such time and was aware, at the time of initiating contest, that the minor, with his guardian, was residing upon and claiming the land. 25-384

217. Duty of administrator fixed by notice of the claim. 5-454

218. Administrator may complete entry for the heirs, but he should show the existence of heirs capable of inheriting within a reasonable time after appointment. 15-177

219. Executor not authorized to complete claim for the benefit of devisee. 6-671

220. Administrator, after qualification, may enter. 5-454

221. Right of administrator to complete claim defeated by intervention of an adverse claim. 5-454

222. Section 2269, R. S., does not authorize an administrator to complete the claim of deceased preemptor where the heirs are of age and proceeding to perfect the entry. 13-245

223. Failure to cultivate on the part of the heir excused for climatic reasons. 3-345

VII. Entry.

See FILING.

224. Under the regulations of the department the tracts embraced must be contiguous. 6-621

225. Tracts cornering on each other are not contiguous. 6-621

226. When allowed, relates back to final proof, to the exclusion of intervening adverse claims. 8-224; 10-253

227. The rule that an entry is equivalent to patent, so far as third parties are concerned, does not apply to an entry void for fraud. 2-780

228. Rights secured by, not defeated by failure of local office to forward the final proof. 14-349

229. Of a portion of the land filed for and settled upon is an abandonment and relinquishment of the remainder. 6-356; 16-251

230. Allowance of, by the local officers does not preclude the General Land Office or department from passing on its validity. 8-269

231. Allowed will not be canceled except on positive showing of bad faith. 6-292, 418

232. Found to be fraudulent and based on false proof must be canceled. 2-779; 8-524

233. If made contrary to law, should be canceled. 8-269

234. Made without prerequisite compliance with law is illegal, and the entryman exhausts his right thereby and can not make a second, nor have the first reinstated on subsequent compliance with law. 11-290; 12-418

235. Preemptor who has complied with requirements in the matter of settlement and is called away by military service has six months after close of service in which to make entry. 14-364

236. Where cash entry has been made of record, though inadvertently, it can only be vacated by regular proceedings. 2-57

237. Of double minimum land at single minimum price may be rectified by the required additional payment or relinquishment of half the land. 7-579

238. Will be made in the name of the heirs generally on death of preemptor.

6-30

239. Allowed within less than three months from filing of township plat will not be disturbed when it is apparent that all parties have had full opportunity to assert their claims.

6-633

240. Acts performed after, only considered for the purpose of determining claimant's good faith during the period covered by the final proof.

11-290

241. Made in good faith by a married woman may be referred for equitable action where due compliance with law prior to marriage is shown and the final proof and payment are accepted with full knowledge of the facts.

15-230

242. Married woman may make, with a view to equitable adjudication where the proof shows she duly complied with law in the matter of filing, residence, and improvement prior to marriage.

11-366

243. May be equitably confirmed when a single woman, after settlement, filing, inhabitaney, and improvement, marries prior to final proof but after published notice of intention to submit same.

1-460; 9-215

244. Made in good faith by a married woman who, prior to marriage, had fully complied with the law as to settlement, residence, and improvement, may be equitably confirmed.

8-433; 10-629

245. May be confirmed by equitable action, in the absence of an adverse claim, where a single woman, after settlement, filing, inhabitaney, and improvement, marries prior to final proof but after published notice of intention to submit same.

10-166

246. Allowed on second filing may be sent to board of equitable adjudication where the fact of the first filing was disclosed at the time of entry.

8-445

247. Entry should be sent to the board of equitable adjudication where made after expiration of the statutory period.

8-355

PREFERENCE RIGHT.

See CONTESTANT, II; STATES AND TERRITORIES, 13, 97-103, 123-124; WORDS AND PHRASES CONSTRUED, 68.

PRICE OF LAND.

See INDIAN LANDS, 284-285, 332, 383, 418-421, 443, 458-459, 494; ISOLATED TRACT, 48-51; PUBLIC LAND, II; REPAYMENT, V.

PRIVATE CLAIM.

- I. Generally.
- II. Survey.
- III. Boundary.
- IV. Patent.
- V. Arizona.
- VI. California.
- VII. Colorado.
- VIII. Florida.
- IX. Louisiana.
- X. Missouri.
- XI. New Mexico.
- XII. Scrip.

I. Generally.

1. Circular of March 25, 1896, with respect to proof under "small holdings."

22-523

2. Circular of May 1, 1896, with respect to proofs under "small holdings."

22-524

3. Circular of March 30, 1909, under act of February 26, 1909, relating to extension of time for filing small-holding claims.

37-536

4. Circular of September 18, 1895, under amendatory act of February 21, 1893.

21-157

5. The provisions of section 1, act of March 2, 1889, with respect to disposition of land at private entry, are in no wise applicable to the location of a, authorized by a special act.

21-518

6. The extent of a, is limited to the land claimed in the petition for confirmation as presented to the board.

1-167, 257; 3-204; 5-62

7. Pending final settlement, the lands covered thereby are in a state of reservation.

1-166, 167, 392

8. Land embraced within, as presented for confirmation, is reserved from other disposition until final rejection or location.

1-167; 5-62

9. On disallowance of, and direction given for disposition of pending claims under the public-land laws, due opportunity

to be heard should be accorded such claimants. 23-185

10. Lands within exterior boundaries of a "floating grant" reserved until title vests. 3-459; 5-75

11. For a specific place or rancho, reserves the land included within the boundaries as finally ascertained. 11-491, 538

12. Mexican grant of quantity within a tract of larger area is a float, and the lands reserved within such area are those that may be actually required to satisfy the float. 11-463

13. The reservation by section 8, act of July 22, 1854, of all lands claimed under Spanish or Mexican grants, did not depend upon action by the Land Department in giving notice of withdrawal, but became immediately operative by force of the statute, and continued effective until said claims were finally adjudicated, whether by Congress under act of 1854, or by the Court of Private Land Claims under act of March 3, 1891; and on final rejection of a claim the lands embraced therein are immediately released from reservation and become at once opened to settlement and entry without any formal order announcing the termination of the reservation. 30-220

14. Location of, if not fixed and definite, does not effect a disposition of the land. 14-674

15. For land within specific boundaries, reserves only such land as may be finally determined to be within said boundaries. 12-664

16. Grant within larger exterior boundaries does not attach to specific tracts until after survey. 3-180

17. In one of quantity within larger out-boundaries, only so much of the larger tract is reserved as may be required for the actual satisfaction of the claim. 9-471

18. Not reserved until boundaries are identified. 4-294

19. Survey of, may become final as to a portion of the boundary while the remainder is undetermined. 3-307

20. A grant can not be extended beyond decree of confirmation. 1-248

21. Ambiguity in decree of confirmation can not be explained by testimony unless the terms are wholly indefinite. 1-185

22. Decree of confirmation, *nunc pro tunc*, has the same force and effect as if entered at the actual time of the decision. 1-210

23. Reference in decree to expediente and grant makes that instrument a part of the decree. 1-188

24. The translation of the original title papers adopted in the decree of confirmation must be followed in construing said decree. 1-181

25. If there is doubt as to the translation of the original title papers, the Land Department must be guided by the translation which governed the action of the surveyor general and Congress in the proceedings leading to confirmation. 31-202

26. Withdrawal of, from Congress not necessarily abandonment. 1-166

27. A suit to change location of the claim will not be directed where the land forming the interest of the petitioners lies outside the grant limits and could not be included in a resurvey or reissue of patent. 3-78

28. Where patent issued excepting for the Government a military reservation with buildings and improvements, and was received without protest save as to the land, such protest is held to not include the improvements. 3-146

29. If the selection and location of a confirmed floating claim is limited to a given period by the statute, the department has no authority to extend the time. 5-705

30. Failure to confine selection under a floating grant to nonmineral lands, in accordance with the granting act, will not authorize relocation if the statutory period for selection and location has expired. 5-705

31. Claimant referred to Congress for relief where the lands have been for many years occupied in good faith by a large number of persons and the grant is unconfirmed. 3-416

32. The Land Department has no authority to declare claims under foreign grants to be held by complete title. 1-272; 16-550

33. The department has no authority to make an agreement by which confirmees can secure, through desert entry, lands improved by them that will fall outside

the grant if located as required by the statute. 14-606

34. Duty of the commissioner to direct the survey of, and issue patents, not limited to grants covered by the treaty of Guadalupe Hidalgo. 11-203

35. Commissioner may investigate, on the suggestion of parties alleging interests in conflict with, if such action is otherwise proper. 16-408

36. In the adjudication of, the department must follow statutory enactments even though such enactments are in violation of treaty obligations. 16-550

37. Congress having confirmed and directed the survey of, it is not within the province of the Land Department to question its validity. 31-202

38. Where conflicting grants have been confirmed each without reference to the other, it is the duty of the Land Department to follow the confirmations and survey and patent each grant, leaving to the judicial tribunals the determination of all matters of priority and superiority of right to the area in conflict. 31-202

39. There is no provision in the act of March 3, 1891, requiring one claiming a complete and perfect title through the Spanish or Mexican Government to lands embraced in the Gadsden Purchase, who does not come into court voluntarily for the purpose of having his title confirmed under section 8 of said act, but is brought into court by the United States without his consent, to except from his claim, and, as a condition to confirmation of his title, to recognize the title of the United States to, such portions of the lands claimed by him as may have been sold or disposed of by the United States. 34-506

40. The United States may, under said act, bring the grant claimant into court without his consent, for the purpose of determining whether he has any title to the lands claimed, and, if so, the extent of such title, but not for the purpose of confirming the title to portions of said lands sold or disposed of by the United States. 34-506

41. The commissioner is without authority to determine whether the survey of a private land grant conforms to the decree of the court, but has simply to perform the ministerial duty of issuing patent for the

land according to the survey as approved by the court and in accordance with the terms of the decree. 34-506

42. The Land Department is without authority to pass upon the validity and extent of a private-land grant confirmed and surveyed under decree of the Court of Private Land Claims, or to determine as to the validity of the decree and survey, its jurisdiction, after approval of the survey, being limited to the ministerial duty to issue patent, all other matters being solely within the jurisdiction of the courts. 37-480

43. On application for suit to set aside a patent issued for a, all matters that under the issues could or should have been determined by the board of land commissioners will be presumed to have been adjudicated by said board. 18-386

44. The department will decline to advise suit for vacation of patents where it appears that in the proceedings before the board of land commissioners the Government had due opportunity to present all the alleged defects in the grant, where no direct charge of fraud on the part of the grantee as against the Government is made, and where patent has been outstanding for many years and the rights of third parties have intervened. 18-386

45. Where the attention of Congress has been called to the fact that the conditions subsequent in a grant have not been complied with, and no action is taken by Congress, such failure to act will be taken by the department as an expression of the legislative will that the decisions of the courts be accepted as a guide in administering the law. 24-109

46. In the adjustment of the interests of the Government in a confirmed, where a portion of said claim has been relinquished and other land taken in lieu thereof, the boundary lines of said grant, as judicially approved in the final decree of confirmation, should be recognized as determining the true extent of the grant, as between the grantee and the Government. 26-576

II. Survey.

47. When confirmed, the sole duty of the department is to ascertain the extent and place thereof. 1-394

48. The official survey takes the place of the juridical measurement required by the Mexican law. 1-198

49. In the location of, the survey must follow the decree of confirmation and act of juridical possession. 1-213, 248; 5-559

50. In the location of a, in which the decree of confirmation adopts the act of juridical possession, the survey is controlled by the record of juridical measurement. 13-84

51. The survey of, under a decree of confirmation that adopts the act of juridical possession, must be governed by the record of juridical measurement, and not by a conjectural estimate of area set forth in said decree. 14-259

52. The extent must be ascertained by the record of juridical possession, where the grant is confirmed as recommended by the surveyor general and that officer's recommendation is ambiguous. 18-376

53. It is the duty of the commissioner to see that the location follows the decree of confirmation as closely as practicable. 1-213

54. The instructions for the survey of a confirmed, must follow in terms the decree of confirmation. The department may determine on appeal whether such instructions are in conformity with the decree, but it can not review the action of the court in the matter of fixing the boundaries of said claim. 22-105

55. In survey of, reasonable, not arbitrary, discretion should be exercised. 1-179

56. In closing, must terminate at "the place of beginning." 6-41

57. If the call is plain and no particular course is prescribed, a straight line must be adopted. 6-197

58. In the survey of, mandatory and specific calls must be followed. 5-559

59. As the claim (New Mexico) was confirmed as "in the vicinity and beyond the limits" of a pueblo, the survey must be amended so as not to conflict with the patented pueblo. 2-421

60. In the survey of riparian grants in Louisiana the direction of the side lines is determined by the form and general course of the water front. 6-473

61. Because of erroneous connections in its plats and descriptive notes and be-

cause it identifies and conforms to but one of the boundary calls, is rejected. 2-368

62. Approved by the surveyor general (California) becomes the official survey and must be followed in determining the location. 2-366

63. The date of approval is the date of a survey. 1-262; 5-415

64. A survey approved by the surveyor general is the official survey and must be published as such. 1-248

65. Finality of survey determined by failure to appeal. 4-506

66. Whether the surveyor general properly construed and followed the decree of confirmation must be determined by appeal to the General Land Office. 1-237

67. Authority of surveyor general ceases on approval of survey. 1-210

68. Secretary has authority to reverse the action of the commissioner in the matter of a survey. 5-483

69. The location of, within the limits embracing larger quantity may be controlled by the Land Department. 1-179, 245

70. Supervisory authority of the Land Department in the survey of, is amply provided for. 1-198, 213

71. Whether invoked by appeal or otherwise, the Secretary under his supervisory authority may order a resurvey. 5-483

72. Resurvey of town grant allowed on corrected description of the boundary lines. 1-285

73. Questions relating to survey (New Mexico) are within the commissioner's jurisdiction, and properly come before the Secretary only on appeal. 2-420

74. The Secretary has complete jurisdiction over the survey (pueblo lands of San Francisco). 2-347

75. Appeal from action taken in the execution of an order for a modified survey brings up only new matter. 1-239

76. The department will be governed by decisions of the courts as to the validity of surveys in. 3-177

77. The right to demand survey of a claim (California) under act March 3, 1851, inheres in the claimant only upon final decree of confirmation. 2-365

78. Conflicting rights arising from premature survey protected in the location of. 1-180, 245

79. A second survey allowed pending confirmation. 3-438

80. Location by survey (New Mexico) may not be properly made until after confirmation; a preliminary survey prior thereto is not authoritative or final. 2-419

81. Preliminary survey of, allowed on deposit of sum to cover estimated cost. 4-430, 482

82. The costs of survey that are required to be paid are only the costs of the survey that is finally approved as correct. 13-294

83. Payment of the costs of survey and platting is required in all cases subsequent to act of July 31, 1876; only the proper costs of surveying and platting are chargeable. 2-371, 463

84. The Government must be reimbursed for cost of the survey before patent issues. 13-294

85. The cost of survey shall be paid by claimant, after completion of survey, but prior to patent. 31-202

86. Cost of surveying and platting must be paid into the Treasury of the United States; payment to the surveyor general is not the payment required by statute. 16-347

87. The "necessary expenses" of survey and plat, under section 10, act of March 3, 1891, one-half of which are to be paid by the grant claimant, embrace all expenses necessary to completion of such a survey as will be entitled to approval by the Court of Private Land Claims, including cost of publication of notice of the survey required by the statute and cost of additional surveys, where necessary and ordered by the court, but not including cost of examinations in the field made by special agents of the Land Department. 34-136

88. In the absence of allegation or evidence of fraud the Land Department will not consider the question of necessity or cost of a completed survey. 2-463

89. Survey made prior to decree rendered *nunc pro tunc*, but subsequent to the actual decision, is valid. 1-210

90. Survey not disturbed on indefinite charge of fraud. 4-508

91. In construing words of limitation the final action of the executive authority is conclusive upon the department. 1-168

92. The grant claimants held estopped by the settlement rights of others from disputing the correctness of the survey. 4-546

93. When parties interested had full opportunity to be heard and no new matter of fact is presented the question of approval will not be reopened. 2-345

94. The Secretary having settled certain lines of survey, the commissioner's indorsement of approval on the plat of survey thereafter is merely a ministerial act. 3-424

95. Application for approval of survey having been rejected in 1874, the case was held *res judicata* on renewal of application in 1882. 3-177

96. When the applicants for survey (Louisiana) are meagerly described, but have been recognized and survey ordered, on objection amendment will be allowed. 2-395

97. A statute confirming a, "as recommended for confirmation" by the surveyor general passes the title of the United States as effectually as if it contained in terms a grant *de novo*. 19-396

98. Confirmation of a Mexican, as "examined, approved, and recommended" for confirmation by the surveyor general and as "duly surveyed by the United States," without requiring the issuance of patent, leaves the department without jurisdiction, and an order of the General Land Office for resurvey of a grant thus confirmed is without authority. 16-445

99. An application for survey of lands alleged to be within a Spanish grant must be denied, where it appears from the record that the official survey of said grant, on which patent issued, was made after due notice to the parties interested, apparently followed the lines fixed by the Spanish authorities, and was acquiesced in for a long term of years. 25-491

100. Survey having been made according to law, and so decided by the proper officers of the department, their authority in that respect is exhausted, and they can not order another survey. 17-105

101. Confirmation according to a survey made under order of a court for the pur-

pose of determining the respective rights of the parties to the controversy then pending before the court, as between themselves, does not deprive the Land Department of authority to make a survey thereof, according to the boundaries as confirmed, with a view to segregating the grant from the public domain and establishing and marking the boundaries by official survey. 36-117

102. The Land Department has jurisdiction to approve the official survey of a grant confirmed by Congress, notwithstanding the grant as surveyed conflicts with the survey of another grant which has been approved in pursuance of a decree of confirmation and upon which patent has issued. 36-117

103. While the validity of title to a private land grant does not depend upon the issuance of a patent, where the boundaries of the tract have been clearly defined and can be identified, it is nevertheless the duty of the Land Department to fix by appropriate surveys the boundaries designated by the confirmatory act, especially where such survey is essential to the accurate segregation and delimitation of the claim from the public lands. 37-509

104. Department has no authority to order resurvey of patented, while the patent is outstanding. 14-557

105. The owners of a patented, will not be heard to dispute the correctness of a public survey, closing the lines thereof on said claim, where such survey excludes from the public domain the full amount of land covered by the patent. 19-417

106. Where the confirmatory act provides that the survey "shall conform to and be connected with the public surveys of the United States, . . . so far as the same can be done, consistently with landmarks and boundaries specified" in the grant, and, on account of the absence of public surveys in the vicinity, it is impracticable to make the survey conform to and be connected with the public surveys, the same will not be required. 31-202

107. Resurvey of, for the alleged reason that the existing survey does not show the true boundaries, is not warranted where it appears that on a showing made by the grantee for legislative confirmation

of the "remainder" of the grant the petition was granted, and the subsequent surveys recognize approximately the full area of the grant contemplated by Congress. 21-559

108. After survey and patent, corrections must be secured in the courts. 1-229

109. The department has no jurisdiction to order the survey of a, embraced within an outstanding patent issued on the claim of another. 17-42

110. The Higley survey accepted as defining the boundaries of the Moraga. 3-204; 5-155

111. The Higley survey, substantially locates the claimed limits of the Moraga grant, and lands excluded therefrom by said survey are public and subject to entry so far as any conflict with said grant is concerned. 13-297

112. Rule upon the Houmas claimants to show cause why the survey should not be closed upon the line fixed by the court. 4-472

113. Publication of survey made and certified under the act of 1860 is conclusive upon all parties. 1-260, 377; 5-415

114. A survey made after the passage of the act of 1860, duly advertised and not taken into the district court, is final. 1-260

115. A survey approved after the passage of the act of 1860 was such a survey as that act contemplated. 1-260

116. As to claims pending in the district courts for correction or confirmation of survey new jurisdiction was conferred by the act of 1864. 1-173

117. A survey approved prior to the act of June 14, 1860, published and ordered into the United States district court under said act, and pending therein at the passage of the act of July 1, 1864, was within the jurisdiction of said court, and its approval thereof was final. (See 5 320.) 1-173

118. Though survey had been published under the act of 1860 and approved by the court, as republication was ordered under the act of 1864 the case should proceed in the usual manner. 1-246

119. Objections to survey are not required to be under oath by the act of 1864. 1-266

120. Survey made and approved prior to the act of July 1, 1864, must be published in accordance therewith. 1-210

121. Final determination as to survey under the act of June 14, 1860, conclusive as against claimants who do not protect their interests. 5-415

122. A survey approved prior to the act of June 14, 1860, duly published and ordered into court, and pending at the passage of the act of July 1, 1864, is final. 4-102

123. The act of 1864 contemplated final adjudication of all questions affecting boundaries and extent on objection to the first survey under publication, and that subsequently no objections could be raised against such adjudication under cover of attack upon the reformed or modified survey. 1-238

124. Authority of the court over surveys under the act of June 14, 1860. 5-320

125. Publication of notice not required by the act of July 1, 1864. 5-483

126. In a case pending in the United States district court at the passage of the act of July 1, 1864, the court was authorized to revise a former survey or order a new one. 5-320

127. The approval of a new survey ordered by the district court in a case pending at the passage of the act of July 1, 1864, rests with the Commissioner of the General Land Office. 5-320

128. Survey made under the act of July 1, 1864, does not segregate the land if not approved by the commissioner. 12-664

129. Survey of, authorized by section 8, act of July 23, 1866. 5-43

130. Survey under section 8, act of July 23, 1866, not effective for any purpose until copy of the plat is filed in the local office. 10-630

131. The confirmees of the Scolly, have the right to select the point of location when the Government is ready to survey the tract confirmed, but a failure to exercise this right after due notice will be treated as a waiver of said privilege. 14-606

132. A suit to set aside a patent on the ground of fraud in the survey will not be advised, where survey was regularly made, duly reported and approved, and held for a term of years prior to patent, and no

fraud is in fact shown in connection with said survey and its approval. 19-396

III. Boundary.

133. In establishing boundaries the decree of confirmation must be followed, and the Land Department has no authority to fix a different line agreed to by coterminous owners. 6-179

134. Words defining extent, without fixing a boundary, construed and applied. 6-473

135. Quantity must control in the survey of a grant of quantity, even though all the monuments designating the boundaries are not found in such survey. 19-201

136. Parol testimony in the location of, only admissible where the boundaries as described in the decree of confirmation and act of juridical possession are ambiguous, or for the purpose of identifying said boundaries. 5-559

137. In determining the boundaries of, the language of the decree of confirmation must be accepted and followed unless so ambiguous as to require extraneous aid to show its meaning. 12-364

138. The delivery of juridical possession involved the establishment of boundaries. 1-198, 255

139. Confirmation presumes definite boundaries. 1-181

140. The sixth section of the act of March 3, 1853, reserved until the location of the grant (Moraga) only such land as was claimed, and terms of boundary must be determined by the claim as filed before the board of land commissioners. 3-204

141. Extent of, not diminished or boundaries changed because a river that marked a boundary line has changed its course. 1-213

142. Where a tract (pueblo lands of San Francisco) is to be bounded by the ocean and a bay the line intended is the line of ordinary high-water mark of the bay and ocean proper crossing the mouths of inland streams, though navigable and affected by tides. 2-346

143. Where hills, mountains, or mountain ranges are named as boundaries the foot or base is to be taken as the boundary

meant unless the top or ridge is clearly indicated. 1-288

144. The grant was of such depth "as shall be found unto Lake Maurepas," or "as far back as Lake Maurepas," but as said lake was not found within the side lines of said grant it is held that it did not constitute a boundary, but was named as a point to designate the depth of the grant, and that such depth will be correctly shown by a line drawn through the center of the grant from the front to the rear, terminating at the point of intersection with a line drawn at right angles thereto and touching the lowest point of the southern shore of the lake. 6-473

145. In fixing the back line of the McDonogh and Fontenot claims the lowest point of the southern shore of Lake Maurepas as it now exists should be taken as the starting point. 12-496

146. The words in the decree of confirmation (pueblo lands of San José) "including part of the oak grove now or formerly at this place," "and including all of the willow grove now or formerly at the source of said river," were not explanatory of other words of boundary, but were descriptive of the actual boundary lines. 2-359

147. Permanent monuments and natural objects named as boundaries control courses, distances, and quantity. 2-366

148. Where the tie line purporting to connect the survey of the claim with the public-land surveys is shown to be erroneous, the actual locus of the claim as defined and surveyed on the ground must prevail. 34-67

149. Confirmation "to the extent of one-half of a square league of land, a little more or less, . . . bounded and described as follows:" the boundaries designated will control the location (California). 2-366

150. Where a river and a point of table-land are named as the western boundary of a grant (New Mexico), the point of table-land forming the southwest corner, and the river, after a northeast and northwest course, runs easterly $3\frac{1}{2}$ miles and then turns northeasterly to a point due north of said point of table-land, the line

should be run north from the point of table-land to the said turn in the river. 2-425

151. Boundary limits as defined through occupancy. 4-360

152. Exterior boundaries of the Rancho Azusa specifically defined. 4-357

153. Boundaries of Moraga and El Sobrante discussed. 5-62

154. Boundaries established by adjoining claim. 4-294

155. The question of the boundaries of the claim (Houmas) should be determined by the commissioner before submission of the evidence in an appeal to the Secretary. 2-650

156. The adjudication of the boundary (pueblo lands of San Francisco) goes to the title of the claimant as it existed at the acquisition of the country. 2-351

157. Where the lines of location necessarily conflict with prior grants (New Mexico) it is not the province of the Land Department to determine questions of title; the granted and confirmed boundaries must be followed, leaving such interferences to be adjusted by the parties or by the courts. 2-426

158. The issue of patent finally settles all questions of boundary (California) so far as the Land Department is concerned. 2-459, 466, 467

159. In a proper case of error shown the department may extend the boundaries although patent may have issued for a lesser area. 5-43

160. Evidence in the case (Rancho Casamalia) considered and found not to justify interference with the original survey as patented. 2-466

IV. Patent.

161. Patent must follow confirmatory statute. 5-61

162. Form of patent, and to whom same should be delivered, matters for the commissioner to determine. 4-375

163. Error in judgment of commissioner in location of, will not invalidate patent. 4-568

164. Patent for unconfirmed grant will not issue. 3-416

165. A confirmatory act must govern in the issue of patent; where confirmation

was to "the inhabitants of the parish" (Louisiana) patent will so issue, and not to "the people of the parish." 2-390

166. The action of Congress in designating the confirmee must control the department in the issuance of patent.

13-646; 15-58; 27-683

167. For a confirmed claim (Louisiana) issues in the name of the confirmee and inures to the benefit of those legally entitled. 2-397

168. Under the act of 1832 patents for claims in Florida issue to the assignee of the confirmee on the production of regular chain of title. 5-677

169. Where delivery of patent (Florida) was the subject of controversy before the surveyor general by certain representatives of the heirs, time for appeal should have been allowed; having been delivered, however, to one of the parties, the Land Department will not interfere with the possession. 2-386

170. Where right to the patent (Louisiana) is in controversy the local officers will decide the question, with usual time for appeal; if none is filed, they will deliver it in accordance with their decision; if appeal is filed, the case must be sent to the commissioner and the patent held until final action. 2-388, 389

171. Persons claiming delivery of patent (Louisiana) must furnish an unbroken chain of title showing to whom the lands inure; if agents or representatives, they must connect themselves with the patentees. 2-389

172. Patents (Louisiana) should be delivered, with preference in the order named, to (1) the person to whom issued; (2) the claimant under the grantee, with unbroken chain of title; (3) one presenting a duly executed power of attorney from the person entitled as above. 2-389

173. Patent for, should be delivered to some one having an interest in the land conveyed. 3-554

174. Patent from the Government would convey no title to land within a complete French grant. 6-149, 347

175. Patent not necessary to vest title confirmed by act of May 25, 1896; but where claimant also comes within the act of June 15, 1844, he is entitled thereunder

to have patent issued to him as evidence of the title vested by the confirmation.

36-273

176. The act of June 6, 1874, only dispensed with the necessity of patents when claimant was by law entitled to patent.

3-179

177. "Patent" certificates for claims confirmed by the act of 1828 were transmitted to the General Land Office to show the action of the Land Office in the premises. 11-149

V. Arizona.

178. In Arizona under act of February 5, 1875, must be filed in the local office and then brought before the commissioner on the question of occupancy before occupant can purchase; if decided adversely, the land is open for preemption or homestead, the occupant for less than 20 years having the prior homestead right. 2-340

179. Joint action by the local officers upon these claims is required by the law. 2-340

180. Proof of occupancy must be by the facts showing it, and not by the conclusions of witnesses. 2-341

181. Where proof of occupancy is not sufficiently definite, witnesses must be summoned and examined; instructions given. 2-341

182. A preemption claim may not be filed until the occupant claim is adjudicated. 2-343

183. Falling within the act of July 22, 1854, is to be submitted to Congress for confirmation. 4-484

184. The repeal of section 8, act of July 22, 1854, and the acts amendatory thereof, deprives the department of authority to declare further reservations of land under said acts. 14-97

185. Since the repeal of section 8, act of July 22, 1854, by the act of March 3, 1891, the department is without jurisdiction over Spanish and Mexican claims in Arizona. 20-146

186. The statutory provision directing the surveyor general to locate a selection under the act of June 21, 1860, does not take the action of said officer out of the supervisory authority of the commissioner and Secretary. (See 29-44.) 13-624

187. The duty of locating selections under the act of June 21, 1860, imposed upon the surveyor general of New Mexico, devolved upon the surveyor general of Arizona when the lands affected passed into the new surveying district created for that Territory. (See 29-44.) 13-624

188. The provisions of section 8, act of July 22, 1854, as to claims in New Mexico, were extended by act of August 4, 1854, to the lands in the Gadsden purchase, and are applicable to claims within said purchase that are now included in the territorial limits of Arizona. 16-408

189. A reservation of land under section 8, act of July 22, 1854, is statutory in character and effective as soon as the claim is made before the surveyor general; and it is not within the power of the Executive to modify or revoke such reservation. 16-408

190. A reservation under section 8, act of July 22, 1854, for the benefit of, is not dependent for its efficacy upon the filing of a plat showing the survey of the claimed lands or the notation of such reservation on the records of the Land Department, but such action is proper in the interest of good administration. 16-408

191. The act of March 3, 1891, repeals section 8, act of July 22, 1854, but does not revoke the reservation made thereunder. 16-408

192. In the enactment of the seventeenth section, act of March 3, 1891, Congress had in contemplation the protection of individual possession, and the right of entry under said section can not be recognized where the possession is not of such character. 31-323

193. The right to locate selections under the Baca grant is confined to nonmineral land, and the claimant must show the present known character of the land. 13-626

194. There is no power or authority in the department, on failure of the claimants to make selection and location within the period designated by the statute, to remove the limitation and authorize a selection and location thereafter. (See 29-44.) 5-705

195. The department has no authority to cancel a selection and location made within the period prescribed of nonmineral

land or land not known to be mineral. (See 29-44.) 5-705

196. The selection and location of lands known to be mineral might be properly vacated; but the right to select other land in lieu thereof would be barred unless made within the statutory period. (See 29-44.) 5-705

197. The act of June 21, 1860, authorized the heirs of Baca to select nonmineral lands, and the burden is upon claimants to show that the lands selected are of the character designated; and this showing can be required at any time prior to patent even though the character of the land may not have been known to claimants at date of selection. (See 29-44.) 12-676

198. The right of the Baca claimants under selections made in accordance with the act of June 21, 1860, is not dependent upon the present claim of the town of Las Vegas. (See 29-44.) 12-676

199. The final act by which title passes under the grant made by section 6, act of June 21, 1860, is the acceptance by the department, and the filing of approved plat and field notes, of a survey whereby the surveyor general made location of the selection of lands affirmatively shown to have been vacant and nonmineral at the date of selection, so far as was then known by the selectors. 36-455

200. Lands which at the date of the selection of Baca Float No. 3 were embraced within the Tumacacori, Calabazas, and San Jose de Sonoita claims were not "vacant land" within the meaning of section 6, act of June 21, 1860, and were therefore not subject to such selection. 36-455

201. Instructions of January 29, 1901, under act of January 14, 1901, relative to the Algodones grant. 30-455

202. The right of purchase accorded by the act of January 14, 1901, to purchasers from the Algodones grant claimants, is limited to *bona fide* settlers and residents on the land, having a permanent home thereon of which they might have been deprived but for said statute. 32-11

203. In case of a conflict of claims under the act of January 14, 1901, between one who subsequent to the decision of the Court of Private Land Claims sustaining the grant, and prior to May 23, 1898, the date of the decision of the Supreme Court

holding said lands to be the property of the United States, had purchased from the grant claimants a portion of said lands and had established his home thereon, and one who prior to the passage of said act had occupied a portion of the land with the intention of entering the same under the homestead or desert-land laws, the respective rights of the claimants must be determined by priority of initiation.

32-286

204. The right to purchase from the United States accorded by the act of January 14, 1901, is limited to those who purchased the lands claimed by them from the grant claimants subsequent to the decision of the Court of Private Land Claims, sustaining the grant, and prior to May 23, 1898, the date of the decision of the Supreme Court holding said lands to belong to the United States, and who established permanent homes on the lands so purchased.

32-287

VI. California.

See STATES AND TERRITORIES, 43-72, for rulings under section 7, act of July 23, 1866.

205. The act of March 3, 1851, is remedial to the extent of protecting claimants under foreign grants in the assertion of their claims.

5-65

206. Final decree of board and district court conclusive as between the claimant and the Government.

4-567

207. Extent of jurisdiction conferred upon the board of commissioners and United States courts.

5-320

208. Confirmation by the board did not enlarge the grant, but passed title in accordance with the law of the nation from which the claim was derived.

6-186

209. The act of June 19, 1878, gave to the United States district court jurisdiction as to title and to the Land Department the location of the claim.

1-262

210. A decision of the department under the act of 1864 as to whether a grant is one of boundary or quantity is conclusive.

1-238

211. The term "sobrante" means simply surplus; a grant for a sobrante is not a grant by name.

1-181

212. "Sobrante" as used in departmental decision in Lompoc case, construed.

1-248

213. The words "lying in between" construed in the location of El Sobrante.

1-191

214. The statutory reservation for El Sobrante was limited to lands lying between the five ranchos (named).

3-202, 204, 228

215. Held as "sobrante" in the sense that it applied to the surplus land limited by the lines of the surrounding ranchos.

1-248; 4-95

216. The right to the pueblo title and possession rests in the city of San Francisco by judicial confirmation, sanctioned and ratified by legislative grant.

2-346

217. The words "establishment of San José" construed to mean all the lands held for the benefit of the mission.

5-68

218. Status of mission lands in California.

5-68

219. The claim to the Azusa Rancho was *sub judice* until the issuance of patent thereon.

5-691

220. Authority to hold and dispose of pueblo lands as recognized under the laws of Mexico.

6-179

221. Under the laws of Mexico in force in California at the time of the acquisition of the latter country the pueblos were entitled to lands occupied as the site of the town, excepting those reserved for national use.

6-179

222. Where the court has vacated a decree and granted a new trial the Land Department will not take action until the final decree is made.

2-364

223. Selections under the act of October 1, 1890, in lieu of lands belonging to the Rancho Punta de la Laguna must be made within one year from date of said act, and may be by agent or attorney under appropriate instructions.

11-512, 550

VII. Colorado.

224. By the act of February 25, 1869, approved plats were made evidence of title.

1-269

225. The delivery of approved plat as evidence of title directed.

1-269

226. The propriety of allowing entries (preemption) on lands (Vigil and St.

Vrain derivative claim) relinquished by claimants is doubted; special considerations in this case forbid it. 2-382

227. The land in question (Vigil and St. Vrain derivative claim) is not open to entry or filing because action on the appeal from rejection of the claim by the local office was suspended by the President on the ground that it was final, which decision was overruled by the circuit court, and the case is now pending in the supreme court and not finally determined. 2-385

228. Motion to substitute another for appellant in the rejected derivative claim (Vigil and St. Vrain), on the ground of judgment and sale under execution in his favor, denied on the ground that the Land Department has no longer jurisdiction under the President's order. 2-378

229. Since the President's order affirmed the finality of the decision of the local office in the claim of Thomas Leitensdorfer and patent has issued for it, the tracts outside the limits allowed by the local office are subject to the settlement claims. 2-590

230. Section 1, act of February 25, 1869, does not authorize an appeal from the decision of the local office on claims presented under the Vigil and St. Vrain grant. 11-226

VIII. Florida.

See IX HEREOF.

231. In Florida under one square league in quantity reported for confirmation January 14, 1830, were confirmed by act of May 26, 1830, except such as were confirmed by the Spanish Government after January 24, 1818. 5-677

232. The specific exception of certain claims from the reports referred to Congress January 14, 1830, is conclusive that all other claims so reported and referred were confirmed by the act of May 26, 1830. 5-677

233. Decided and recommended for confirmation by the commissioners, and referred to Congress January 14, 1830, is confirmed by section 1, act of May 26, 1830. 24-205

234. The provisions with respect to the confirmation of, in Florida contemplate

that all such claims, whether founded upon perfect grants or incomplete titles, should be presented to the board of commissioners for confirmation or to Congress for final action, and that all claims not finally acted upon by Congress should be brought into the courts within a specified period. 16-550

235. The term "league square" in the act of May 23, 1828, confirming certain Spanish claims in west and east Florida, contemplates the same area described by such term in the prior acts confirmatory of Spanish grants in west Florida and Louisiana, and means 6,002.50 acres. 18-64

236. A patent having issued to the beneficiary in accordance with the terms of the special act of July 2, 1836, a conclusive presumption arises that all the requirements of said act were complied with by said beneficiary, including the relinquishment of the lands specified in said act. 23-130

237. The grant made to Dr. Perrine by act of July 7, 1838, and subsequently conferred by Congress upon his heirs, was a grant *in præsenti*, conveying the legal title to the grantees, defeasible only by forfeiture duly declared by act of Congress; and until such forfeiture be so declared the grantees have the right to make the settlement required as a condition precedent to patent. 24-109

238. The right of settlement under the act of July 7, 1838, on the granted premises, is restricted to the grantees or those claiming under them, and all other settlers thereon are naked trespassers; and their settlements may be claimed by the grantees as a fulfillment of the conditions of the grant, whenever the settlement is such as the grant requires. 24-109

239. If the terms of the grant of July 7, 1838, are complied with it inures to the beneficiaries thereunder, and patent will issue accordingly; it is therefore not material for the Government to inquire as to the interest of others in said grant. 24-109

IX. Louisiana.

240. A claim to land in Florida and Louisiana resting on occupation, habita-

tion, and cultivation under the former Government is a "private land claim."

5-613, 617

241. The term "grant" in the Florida and Louisiana treaties comprehends not only those made in form, but any concession, order, or permission to survey, settle, or possess, whether evidenced by writing or parol or presumed from possession.

5-420

242. Louisiana settlement claims not confirmed absolutely for a certain number of acres.

5-287

243. Title by "occupation," etc., is of the same validity as one founded on permission to settle or order of survey.

5-617

244. Title resting on a permit to settle and an order of survey made prior to 1800, without any settlement or survey, is incomplete.

5-576

245. Title through succession sale dependent upon the jurisdiction and order of the court.

5-158, 283

246. Where sale was ordered without proof as to heirs, former proceedings, or the want of them, application by the purchaser for satisfaction by issue of certificates of location is denied on the ground that the proceedings were insufficient to warrant the sale or effect a transfer of title.

2-403

247. The judgment of a court appointing an administrator for the estate of a deceased private land claimant and directing that the indemnity right arising out of the private claim be sold as an asset of the claimant's estate, is not binding upon the Land Department as to the question of title to such right, where the court acted without jurisdiction of the parties or the subject-matter; and the Land Department has authority to determine for itself whether or not the court rendering the judgment had the requisite jurisdiction, whenever such judgment is relied upon to sustain the right to enter public lands, regardless of whether or not the necessary jurisdictional facts appear upon the face of the record.

35-123

248. If the necessary jurisdictional facts appear on the face of succession proceedings, a purchaser at a sale thereunder is not bound to inquire into the truth of the allegations on which the court assumed

jurisdiction; nor is the validity of such proceedings subject to collateral attack on the application of such purchaser for the issuance of scrip on the claim so purchased.

17-56

249. In case of a, confirmed to the "legal representatives" of the claimant, and held under succession proceedings as property of the claimant's estate, the judgment of the court, on application for scrip by the purchaser at the succession sale, must be accepted, in the absence of any proof of the existence of an assignee or legal representative by contract.

17-73

250. In case of a claim confirmed to the legal representatives of the claimant, and held under succession proceedings as property of the claimant's estate, the Land Department, on application by the purchaser at the succession sale for certificates of location under section 3, act of June 2, 1858, is justified in recognizing such purchaser, where the record upon which the sale was ordered and made affirmatively shows the necessary jurisdictional facts, unless it be otherwise shown that the court which ordered the sale was without jurisdiction of the *rem* because of a prior sale or disposal of the claim by the original claimant or otherwise in accordance with law.

33-409

251. Where, in the prosecution of a, through succession proceedings, the jurisdiction of the probate court is attacked, the department will suspend action pending the determination of such question in the courts.

20-60

252. Legal representative of confirmee determined by local law.

5-285

253. A decree of the State district court in the matter of a succession sale is conclusive as to all facts necessary to convey title.

5-158

254. Purchaser of an inchoate claim at a succession sale duly authorized by law considered the legal representative of the confirmee.

5-158, 286; 6-437, 490

255. In a claim under succession sale the Government has a right to inquire whether the property or claim against it was properly subject to sale and sold upon a proper application.

3-44

256. Where a claim depends upon section 3, act of March 3, 1819, for confirma-

tion the confirmee or his legal representative must identify the land. (See 29-698.)

7-1; 8-391

257. But one tract of land granted to the actual settler or his legal representative by section 3, act of March 3, 1819.

9-500

258. Section 2, act of May 8, 1822, providing for confirmation of, theretofore reported as entitled to such recognition, operated to confirm claims so reported, without respect to the limitation in the matter of acreage in the act of March 3, 1819; and where, in the adjustment of a claim thus confirmed, said limitation has been imposed, additional certificates of location, equal in amount to such reduction, should issue under section 3, act of June 2, 1858.

28-275

259. Section 3, act of March 3, 1819, excerpts from confirmation lands claimed or recognized under sections 1 or 2 of said act. (See 29-698.)

7-1

260. No lands were granted by section 3, act of March 3, 1819, which were claimed or recognized by the preceding sections, and it is therefore necessary to identify the land claimed under the third section and to show that it does not conflict with any claim confirmed by the first or second section.

31-344

261. Founded upon a British grant is not confirmed by section 1, act of March 3, 1819, if it had not been sold and conveyed or settled upon and cultivated prior to the treaty of 1783.

9-514

262. Founded upon a British grant is not confirmed by either section 2 or 3, act of March 3, 1819. (See 29-698.)

9-514

263. Third section of act of March 3, 1819, limited to claims based upon inhabitancy and cultivation "not having any written evidence of claim reported," and does not operate to confirm a claim reported in the list of claims, founded on orders of survey, which ought not to be confirmed. (See 29-698.)

16-499

264. Section 3, act of March 3, 1819, makes provision for two classes: (1) every person whose claim is comprised in the lists or register of claims reported by the commissioners, and (2) the persons embraced in the list of actual settlers. The words "not having written evidence of title," as employed in said section, are de-

scriptive of the second class, and not a limitation upon the first.

29-698

265. Under treaty of 1803 the United States acquired no title to land included within a complete French grant.

6-149

266. Grants made by the representative of France after the cession to Spain void unless recognized by the latter before the transfer to the United States.

1-272

267. The proviso limiting claims confirmed by the act of February 5, 1825, to one league square is general and not restricted by the recommendation of the local officers that certain claims should be limited to 1 mile square.

1-275

268. Confirmed by act of February 5, 1825, should pass to patent if the survey did not embrace more than 1 square league.

1-275

269. The mistaken classification of a claim in the report of the register and receiver as among those already confirmed by law will not bring it within the confirmatory provisions of the act of May 11, 1820.

8-80; 9-166

270. Prosecuted under the act of June 22, 1860, must be in the form and with the proofs therein required and presented prior to the expiration of said act by limitation.

3-72

271. Under act of June 22, 1860, and amendatory acts a claim is barred after June 10, 1875, if not prosecuted prior thereto.

9-556

272. Jurisdiction of the Secretary under the act of June 22, 1860.

4-475, 593

273. The claim (McDonogh) was one of those reported by the local officers November 20, 1816, in the first class, which were recognized by the act of Congress and declared to be founded on complete titles; such recognition did not, however, fix its depth or extent, and the duty of survey and segregation followed; as to claims in the second class, where the equity was in the occupants and the fee in the United States, the act annexed the fee to the equity.

2-646

274. Conflicting with claim of State (Louisiana) can not be settled in *ex parte* proceeding.

4-173, 592

275. The State (Louisiana) not estopped from questioning the extent and location of the McDonogh claim by its suit in assertion of its right as the legal rep-

representative of the interests in such claim bequeathed to the city of New Orleans.

6-473

276. Though the act of March 2, 1889, restoring to the public domain certain lands reserved on account of, covers in its descriptive terms only a part of the Conway claim, the intent of Congress was to embrace all the lands within said claim.

19-1

277. The special act of January 10, 1849, authorizing a location in full satisfaction of a confirmed settlement claim, is a grant of an estate in land which at the death of the grantee descends to his heirs.

21-518

278. Where a claimant failed to present to the district court of the State a petition setting forth his claim, within the time allowed by the act of May 26, 1824, as extended by the act of June 17, 1844, the land became, at the expiration of the period of reservation, free, unreserved, and unappropriated public land, and if of the character granted to the State by the swamp-land act, the subsequent confirmation of said claim, by the act of January 12, 1855, did not affect the State's title to so much thereof as had been granted as swamp land.

30-465

279. A double confirmation of title to the same land, made under section 4, act of March 3, 1807, by the commissioners appointed for the purpose of ascertaining the rights of persons claiming land in the Territories of Orleans and Louisiana under the French or Spanish Government, in favor of two different claimants, one claiming under a Spanish patent and the other through such patentee and by right of occupancy, does not have the effect to vest in either of the confirmees a greater estate than was covered by the patent, or to give to either party any right that he could not have acquired under the Spanish Government.

32-370

X. Missouri.

280. A confirmation upon alleged occupancy does not inure to the benefit of parties claiming under a prior concession made to the same confirmee.

6-462

281. Confirmations under act of June 13, 1812, were by virtue of inhabitancy,

cultivation, and possession, and not of concession; and were valid as against all claims except those previously confirmed by the board of commissioners.

6-586

282. Final location of Calve claim conclusive as to parties denying its correctness and asserting rights in conflict.

3-177; 6-462, 586

XI. New Mexico.

283. The sole power of determining the validity of claims arising under treaty stipulations with Mexico rests in Congress.

1-581

284. Under act of July 22, 1854, the local office is charged with the preliminary investigation of a claim in New Mexico.

3-138

285. The local office under act of July 22, 1854, may inquire as to the title of claimants as well as the validity of the grant, and should locate the grant as nearly as possible.

3-138

286. Appeal to the Land Department does not lie from the report of the surveyor general to Congress.

2-413

287. Examinations by the surveyor general are *ex parte* and notice to outside parties is not required.

2-416

288. The surveyor general reports upon the validity (*i. e.*, the regularity and genuineness) of the claim, and it is not his duty to hear and determine controversies between conflicting grants.

2-417

289. Under the act of confirmation the acceptance of patent was in full of all further claims. (Nolan grant.)

4-311

290. Nolan grant No. 39; statement of action made to the Secretary of State.

11-518

291. The department has no authority to cancel a selection properly made under a floating grant of lands subject thereto or not known to be excepted therefrom by their mineral character. (See 12-676; 13-624; 29-44.)

5-705

292. Of Pueblo Tecolote, as confirmed by act of December 22, 1858, requires patent, as in ordinary cases to individuals.

5-61

293. The grant of Las Vegas was a concession of separate tracts to settlers and occupants, and the title thereto is confirmed by the act of June 21, 1860, within the prescribed boundaries of the original

grant, whether within the town of Las Vegas or outside of it. (See 27-683.)

13-646

294. Confirmation of Las Vegas was made direct to the town as a matter of convenience in confirmation and patent and for the reason that the town was a proper party to ask and receive relief on behalf of its people. (See 27-683.)

13-646

295. A resurvey of Las Vegas directed so as to include only the lands allotted under the original concession. (See 27-683.)

13-646

296. In the resurvey of Las Vegas there should only be included the lands allotted to settlers under the original concession at the time the territory became subject to the laws of the United States. (See 27-683.)

15-58

297. Patent on Las Vegas should issue to the town for the benefit of the proper parties. (See 27-683.)

13-646

298. The land not included in the resurvey of Las Vegas should be opened to disposition under the general land laws. (See 27-683.)

13-646

299. The right of the town of Las Vegas to take title as a confirmee, having been recognized by Congress, will not be questioned by the department. (See 27-683.)

13-646

300. The petition for Las Vegas set forth specified boundaries, the grant was made conformably thereto, and the surveyor general recommended confirmation of the grant as a whole, and, as the act of June 21, 1860, confirming said grant, fixed no limitation as to acreage, it must be held that the grant was confirmed for the full amount of land embraced in the boundaries, and that patent should issue accordingly.

27-683

301. Section 6, act of June 21, 1860, authorized the heirs of Baca to select, in place of the land claimed by them, "an equal quantity of vacant land, not mineral," and made it the duty of the surveyor general to survey and locate the lands so selected, subject to the proviso "that the right hereby granted to said heirs of Baca shall continue in force during three years from the passage of this act, and no longer." Held:

1. A selection regularly made by the grant claimants within the time fixed by

said act, can not, after the expiration of said period, be changed, by an alleged amendment, to embrace lands not covered by the previous selection.

2. The time with reference to which the character of the land selected, whether vacant and not mineral, is to be determined, is the date of the selection, and not the date of the approval of the survey of the claim.

3. The duty of investigating and determining, in the first instance, the character of the land selected, rests upon the surveyor general, who should conduct such investigation and make such determination as the work of the survey progresses in the field.

29-44

302. The state or condition of lands, whether vacant, or reserved on account of an existing Spanish or Mexican claim, at the date of their selection or location under the sixth section of the act of June 21, 1860, determines whether the title thereto passed by such selection or location; and an attempted selection or location of lands embraced in any such claim is not validated so as to become operative as to such lands upon their subsequent release from reservation by the final action of the courts declaring such claims to be invalid.

30-97

303. The duty of making survey and location of lands selected by the Baca heirs under the act of June 21, 1860, and of investigating and determining, in the first instance, whether the lands were vacant and not mineral at the date of selection, rests upon the surveyor general; and until such survey, investigation, and determination shall have been made, final action by the Government can not be had upon the selection.

30-497

304. The land embraced within the San gre de Christo grant at the date of the confirmatory act belonged to the United States if not to the grantees, and it was therefore competent for Congress to confirm the title in the grantees either by a grant *de novo* or by confirming the Mexican grant.

11-203

305. The confirmation of the Los Trigos based on the report of the surveyor general was a final settlement of all questions as to the limitations of area by inclosure

and cultivation and conveyed full title to the land within the boundaries. 14-355

306. Under section 8, act of July 22, 1854, filed with the surveyor general, reserves the land from other appropriation until disposed of by direction of Congress, and the repeal of said section by act of March 3, 1891, does not annul such a reservation in force at the passage of said act. 27-604

307. All lands within the territory ceded to the United States by the treaty of Guadalupe Hidalgo and the Gadsden treaty, covered by Spanish or Mexican claims, were, by section 8, act of July 22, 1854, and the act of August 4, 1854, reserved from other disposition until the validity or invalidity of such claims was finally determined. 30-97, 497

308. Lands covered by a Spanish or Mexican grant surveyed and located prior to the Gadsden treaty, with respect to which the right of possession and title under the grant were asserted and claimed, according to such survey and location, at the date of the Baca selection of June 17, 1863, under the act of June 21, 1860, were reserved from sale or other disposition by the Government, within the meaning of section 8, act of July 22, 1854, and the act of August 4, 1854, and were therefore not subject to selection under said act of June 21, 1860. 30-497

309. By treaties between the United States and Mexico, all lands within Mexican and Spanish grants, at the date said treaties were ratified, were placed in a state of reservation, and by the act of March 3, 1891, said reservation is continued in force, and will so remain until final action is taken on the respective claims affected thereby. 24-1

310. The phrase "disposed of by the United States," in section 8, act of March 3, 1891, to define the lands excepted from the confirmatory provisions of said act, construed to mean a final and permanent divestiture of whatever title the United States may have had, or an obligation to convey such a title. 28-544

311. A homestead entry, under which title had not been earned, at the time a decree of confirmation was entered by the court, under the act of March 3, 1891, is

not a disposition of the land that excepts the same from the effect of the decree. 28-544

312. By the terms of section 14, act of March 3, 1891, a claim of ownership, asserted under a Mexican, can not be considered as against a homestead entry on which final certificate issued prior to confirmation of said grant. 23-193

313. Where a small-holding claimant within the provisions of sections 16, 17, and 18, act of March 3, 1891, has filed his claim and made due proof thereof, and is entitled to a patent therefor, at the date of the decree confirming a private land grant in conflict therewith, the lands embraced in such claim must be held to be disposed of, within the meaning of sections 8 and 14 of said act, and excepted from the operation and effect of the decree. 31-332

314. Under section 12, act of March 3, 1891, all claims under Spanish or Mexican grants, referred to in section 6 of said act, are to be held as abandoned if not presented before the Court of Private Land Claims within two years from the taking effect of said act; and a grant occupying such status is consequently no bar to the adjudication of a "small holding" lying within the limits of such grant. 25-391

315. Land embraced in a "small holding" claim, duly filed with the surveyor general, and on which proof is subsequently submitted, is excluded from homestead entry. 27-278

316. The right of a "small holding" claimant to perfect title under the act of March 3, 1891, is not defeated by a prior homestead entry, where at the time of said entry, and long prior thereto, said claimant was in actual possession under color of title, of which fact the entryman had full knowledge. 27-604

317. A mere squatter upon a portion of an odd-numbered section within the primary limits of the grant to the Atlantic & Pacific Railroad, made by section 3, act of July 27, 1866, at the date of the attachment of said grant, without recognition or protection by law or treaty, who applies to make entry of such land as a "small holding claim," under section 17, act of March 3, 1891, as amended February 21, 1893, has no such claim or right as

will except the land from the operation of said grant. 32-83

318. There is no limitation upon the time within which the preferred right of entry accorded a "small holding" claimant by section 17, act of March 3, 1891, must be exercised, but the 18th section, as amended February 21, 1893, requires that notice of the claim be filed with the surveyor general within two years from the 1st day of December, 1892; and the effect of such notice filed within that time is to withhold from entry under the public-land laws all tracts covered by claimant's occupancy and possession until the claim is finally adjudicated or rejected. A claimant who has filed notice of his claim within the time required by the act, does not forfeit his right to make proof of his possession and occupancy by his failure to apply for a survey. 33-61

319. The confirmation of a Mexican grant under authority of section 8, act of March 3, 1891, upon voluntary petition, will not prevent the issuance of patent for a small holding claim lying within the surveyed limits of the grant and asserted in due time under sections 16 and 18 of said act, notwithstanding final proof upon said claim had not been made at the date of the decree. 35-258

320. Where an occupant of lands within the limits of a private land claim failed to assert his claim by petition to the proper court within the period fixed by section 12, act of March 3, 1891, refused, upon opportunity accorded for that purpose, to assert his claim as a "small-holding claim" under said act, and upon survey of the township failed to assert any settlement right within three months after filing of the township plat, the lands thereupon, notwithstanding his occupancy, became subject to entry by the first legal applicant, and the Government having patented the land to another, by virtue of a selection under the act of June 4, 1897, is under no duty to the occupant to institute suit for cancellation of the patent, notwithstanding it was inadvertently issued without consideration of a protest against such selection filed by the occupant. 35-93

321. Section 16, act of March 3, 1891, was designed to protect the rights of

actual settlers in the States and Territories named in the act, to the extent of the land actually occupied, not exceeding 160 acres, as a donation, where the settlement had been actual and continuous for 20 years preceding the township survey; and the subsequent amendment of said section, by striking out the words "residing thereon as his home," did not modify the character of settlement contemplated, or grant as a donation lands upon which no actual settlement had been made and maintained and where actual possession was maintained only by another, as agent or tenant. 35-602

XII. Scrip.

322. The holders of title are the proper claimants for indemnity. 31-238

323. Action as to issue of indemnity scrip under act of June 2, 1858, will not be taken except upon application of a party in interest. 5-357

324. If owned by different parties and the interests therein are separate and determinate, scrip may issue to any one of the owners to the amount of his ascertained interest. 5-617

325. The purchaser of a confirmed claim (Louisiana) becomes *ipso facto* the legal representative of the conferee, and entitled to the scrip issued in satisfaction thereof. 2-405

326. Instructions of July 24, 1901, with respect to notice of application for certificates of location under third section of act of June 2, 1858. 31-45

327. Indemnity under section 3, act of June 2, 1858, will only issue to the owner of the claim to which title has failed, and if applicant has parted with a portion of the land alleged as basis he can only receive indemnity for the part then owned. 8-463

328. Confirmation to the "legal representatives" of the original occupant vests no right in said occupant, and parties claiming through such occupant are not entitled to scrip under the act of June 2, 1858. (See 33-409.) 6-436

329. "Occupation" claims in Louisiana and Florida are within the third section of the act of June 2, 1858. 5-617

330. In claims for, it must appear that the basis was not expressly excepted from confirmation. 5-283

331. Land deducted from, by judgment on remittitur can not afford basis for scrip though presented by the heirs of the party in whose favor the release was made.

9-556

332. Certificates of location will not issue except in case of actual loss. 4-129

333. The issuance of one set of certificates in satisfaction of a grant exhausts the jurisdiction of the department. 4-13

334. Scrip can only issue under the act of 1858 where (1) the claim has been confirmed and (2) remains unlocated.

5-283, 570; 6-487

335. Scrip only authorized under section 3, act of June 2, 1858, in case of confirmed claim, and proof of confirmation must be furnished.

7-1

336. Not authorized by the act of June 2, 1858, for any part of a confirmed claim which at the date of its location was not in conflict with a prior confirmation. 4-129

337. The claim for which indemnity is sought under section 3, act of June 2, 1858, must be shown to have been confirmed by Congress and not located or satisfied in whole or in part.

8-391; 9-514

338. The right to indemnity under section 3, act of June 2, 1858, does not exist if the claim under which such right is asserted was satisfied by location prior to the passage of said act.

11-147

339. An applicant for a certificate under section 3, act of June 2, 1858, must show that the claim as confirmed remains unsatisfied.

15-523

340. There is no authority for the issuance of scrip under section 3, act of June 2, 1858, if the basis had not been confirmed.

8-80

341. Under the act of 1858 scrip should issue in case of an unsatisfied claim for a specific quantity of land, founded on an order of survey made in 1795 with no specific location of the land.

5-570

342. The uncontroverted finding of the surveyor general that no location has been made is conclusive as to such fact.

5-570;

6-437, 490

343. Scrip under section 3, act of June 2, 1858, can not be issued where the original settlement claim has been satisfied.

9-498

344. Act of June 2, 1858, does not necessarily include a claim specifically confirmed by a private act.

4-129

345. Indemnity will be accorded in case of conflict between confirmed claims belonging to the same person.

3-238

346. The third section of the act of March 3, 1819, confirmed the amount claimed by the parties named in the commissioner's list referred to therein, and indemnity is not authorized for land in excess of the amount so claimed and confirmed.

7-152

347. Confirmed by the commissioners appointed under the act of March 3, 1897, is in effect confirmed by Congress, and hence within the act of June 2, 1858.

6-447

348. The claims of Toups and St. Amand were merged in Lanfear by act of Congress; the patent thereupon issued upon approved survey, comprehended a location and satisfaction of the Toups claim in its entirety; the case is *res judicata*, and the parties are estopped by conduct and by the record from receiving scrip under the general act.

2-431

349. The relinquishment or yielding of a superior title in favor of subsequent and conflicting confirmations and locations where the parties in interest can obtain compensation in scrip is illegal.

2-433

350. The issuance of scrip by the surveyor general under the third section of the act of June 2, 1858, is subject to the supervision of the Commissioner of the General Land Office.

5-570; 8-463

351. Having been confirmed in its entirety by judicial proceedings and a decree entered that claimant should have patent for a specified number of acres and scrip for the remainder, and it appearing that part of the lands so confirmed in place had in fact been disposed of by the Government prior to said decree, additional scrip may issue to cover said deficit.

22-200

352. The right to locate surveyor general's scrip on land subject to sale at private entry at \$1.25 per acre, conferred by the special act of June 2, 1858, is in no wise affected by the general act of March 2, 1889, or the absence of a restoration notice, where after said act the land may

have been included in a homestead entry that is subsequently canceled. 31-132

PRIVATE ENTRY.

See APPLICATION, VI; PUBLIC SALE.

1. Public lands withdrawn from, by act of March 2, 1889. Circular of March 8, 1889. 8-314

2. Prohibited by the act of March 2, 1889. 13-550

3. Of land excluded from such disposition by act of March 2, 1889, and allowed after the passage thereof is invalid though made before the local office had been officially notified of said act. 12-201

4. The repeal of the general right of, by act of March 2, 1889, does not operate to restrict rights covered by special act. 22-558, 657

5. The provisions of section 1, act of March 2, 1889, with respect to the disposition of land at, are in no wise applicable to the location of a private claim authorized by a special act. 21-518

6. On one certificate not to include a larger number of tracts than provided for in the form. 5-30

7. Nonmineral affidavit properly required with application to make. 11-216

8. Nonmineral affidavit may be made by applicant's attorney. 14-461

9. Though illegally allowed, is while of record an appropriation of the land. 8-514

10. Though irregularly allowed, excludes the land covered thereby from appropriation under the homestead law. 15-257

11. Of lands withdrawn from preemption not permissible in the absence of express statutory authority. 6-522

12. Right of, can only be exercised after public offering of the land. 4-155

13. A special act of Congress authorizing the location of "one hundred and sixty acres of any of the public lands subject to," confers no authority to appropriate unoffered lands. 18-132

14. Must be equal opportunity for purchase to all persons. 4-311

15. Reoffering an essential prerequisite where the lands once disposed of were re-

stored to the public domain by a statute which provided for such reoffering. 6-451; 8-189

16. Land offered at double minimum, and subsequently reduced, not subject to, without reoffering at the reduced price. (See 4-152.) 1-634; 3-129

17. Reoffering at public auction not required in case of temporary withdrawal. 4-155

18. Where the land was once offered, then increased in price, again offered, then declared by Congress to be subject to sale at the first price, and thereafter entered without further offering, the entry is held voidable, not void. 3-441; 4-152, 285; 8-87, 189

19. The case of *Eldred v. Sexton* cited and distinguished. 4-152; 8-87

20. Lands which have been reduced in price should be reoffered at the reduced price before opened to. 8-87

21. An entry voidable for want of restoration notice may be confirmed by the board of equitable adjudication. 4-152, 285; 8-87, 189; 9-534

22. Not allowed for lands withheld from sale until after notice of restoration. 5-25

23. Restoration notice must follow the cancellation of an entry to make the land subject to. 5-25

24. Restoration notice does not take the place of public offering. 4-156

25. Restoration notice is to notify the public that the land is again for sale at the minimum price. 4-156

26. Not allowed for land reserved through erroneous marking until after regular restoration. 4-311

27. An erroneous notation of record showing the disposition of tract withdraws such land from, until duly restored. 15-486

28. On cancellation of entry covering offered land private entry should not be allowed prior to restoration notice, but if so allowed is not void, but voidable, and may be sent to the board of equitable adjudication. 6-518

29. Offered lands subsequently withheld from sale not subject to, without restoration notice. 6-685

30. Cancellation of a *prima facie* valid timber-culture entry covering offered land does not render it subject to. 6-819

31. Can not be allowed of land embraced within a prior timber-culture entry though such entry may not be of record at the date of the purchase. 14-242

32. Should not be allowed of land once included within a withdrawal or covered by a filing until after reoffering or restoration notice. 9-534

33. Lands which have been once offered, then temporarily withdrawn, and afterwards restored should not be sold at private sale without restoration notice. 8-87

34. Can not be allowed until after restoration notice of land included within an erroneous notation of record showing a prior disposition of said land. 9-10

35. Lands once offered, then withdrawn from entry, and subsequently restored to the public domain are relieved from their previous offered condition, and hence not subject to. 6-522; 8-410

36. Land once offered and subsequently segregated from the public domain by entry, selection, withdrawal, etc., *prior to the passage of the act of March 2, 1889*, thereby lost its status as offered land, and until reoffered is not subject to private entry; but the character of offered land at the date of the passage of the act of March 2, 1889, and *thereafter* segregated, is not altered nor on that account taken out of the class of land subject to private entry or military bounty land warrant location. 37-65

37. Under the graduation act of 1854 no public reoffering is required. 4-156

38. Allowed for land enhanced in price when the record of the local office showed it subject thereto may be referred to the board of equitable adjudication on additional payment of \$1.25 per acre. 7-495

39. After the passage of the act of March 2, 1889, withdrawing the public lands, except in the State of Missouri, from private sale, the Land Department was without authority to permit private cash entry for lands outside of that State, and an entry so allowed is not subject to confirmation by the board of equitable adjudication. 37-285

40. A private cash entry allowed prior to the act of March 2, 1889, for lands which had never been offered at public sale, is void and not subject to confirmation by the board of equitable adjudication, not-

withstanding the land should theretofore have been offered but through inadvertence was omitted from the offering. 37-285

41. A tract of land withdrawn under a railroad grant, and included in a list of lands announced for public sale under a subsequent proclamation, that excepts therefrom all lands "reserved for railroad purposes" can not be regarded as "offered"; and a private entry of a tract occupying such status is void, and not subject to equitable confirmation. (See 15-257.) 18-236

42. Made in good faith of unoffered land may be submitted for equitable action. 15-257

43. Made in good faith of land included in an indemnity withdrawal may be referred to board of equitable adjudication where the withdrawal is subsequently revoked and no adverse claim exists. 8-410

44. Made in good faith of land withdrawn for railroad indemnity purposes may be equitably confirmed in the absence of any adverse claim. 9-232

45. Of a tract withdrawn for railroad indemnity purposes can not be equitably confirmed in the presence of a subsequent selection made during the existence of the withdrawal. 18-241

46. Of land once offered and thereafter excepted from an indemnity withdrawal by a homestead entry which is subsequently canceled may be referred to the board of equitable adjudication. 9-534

47. Of land previously withdrawn as within the primary limits of a railroad grant, though made in good faith, is invalid and must be canceled. 9-159

48. Made in good faith of the land covered by the previous timber-culture entry of the purchaser may be referred to the board of equitable adjudication in the absence of adverse claim. 11-395

49. Of land within a prior timber-culture entry may be equitably confirmed where said entry has been canceled, no adverse claim exists, and good faith is apparent. (See 14-242.) 14-99

50. May be equitably confirmed when made on land appropriated by entry if said entry is subsequently canceled for illegality. 14-244

51. Sent to the board of equitable adjudication where the lands had once been offered and were after withdrawal restored to entry under the "homestead and preemption." 6-262

52. Allowed for land included within a prior swamp-land claim should be suspended, with the right to show that the land did not pass under the swamp grant. If such fact is shown, the entry should be sent to the board of equitable adjudication. 8-644

53. For land within a prior swamp selection may be submitted to the board of equitable adjudication where the selection was subsequently canceled and good faith manifest. 7-218

54. A tract is not excluded from, because it had been embraced within a list of swamp selections where the field notes showed that the land was not subject to selection and the claim of the State was not noted of record. 7-193

55. Allowed to stand though admitted pending the disposition of a prior claim. 4-364

56. Origin of section 2272, R. S., authorizing private entry by preemptor after expiration of the right of preemption. 2-556

57. The act of January 31, 1885, forfeiting the grant to the Oregon Central, did not restore to private entry lands that were offered prior to the granting act and included therein. 4-17; 6-685

58. May not be made of land within the limits of the official survey of a private claim in excess of the amount confirmed and patented. 5-660

59. Lands affected by the repeal of the act of June 21, 1866, not subject to, until offered (Arkansas). 8-155

60. Cash entry for certain land reduced in price prior to reoffering held to be confirmed by the act of March 3, 1883 (Alabama). 3-339

61. The general withdrawal of public land from, by the act of March 2, 1889, is not applicable to the State of Missouri. 9-10

62. Of lands in Missouri; see circular of June 10, 1898, under act of May 18, 1898. 27-68

63. Application to make, may be filed by a homesteader of (Missouri) lands embraced within his entry that can not be confirmed. 10-661

64. Lands suspended from, by the joint resolutions of May 14 and July 16, 1888, were finally excluded from such disposition by the act of March 2, 1889. 10-351

65. Not permissible for lands affected by the repeal of section 2303, R. S., until after offering. 8-514

66. Amendment of, allowed under statutory provisions in case of error. 1-516

67. The act of April 7, 1896, providing for the reinstatement and confirmation of certain, in the absence of intervening adverse claims, contemplated *valid* adverse claims, and inquiry as to the character of apparent adverse claims may therefore be properly made on application for action under said statute. 23-582

68. The fact that a homestead entryman pays cash for a portion of his entry as excess land does not constitute such excess a separate entry which may be regarded as having been entered under the private cash system. 33-274

69. The provisions in the act of August 30, 1890, limiting the amount of land to which title may be acquired by any one person, under the public-land laws, to 320 acres, has no application to private entries under section 2354, R. S. 34-242

PROCLAMATION.

1. A proclamation of the President is immediately operative and imports notice to all the world. 31-252

2. A proclamation of the President takes effect from the first moment of the day it is signed. 33-510

3. A reservation of lands by executive proclamation, subject to congressional action and subsequently ratified by Congress, is operative from the date of the proclamation. 22-196

PROTEST.

See CONFIRMATION, II; FINAL PROOF, VII; MINING CLAIM, IX.

1. Departmental definition of the term "protest" as used in section 7, act of March 3, 1891. 12-453

2. Circular of August 4, 1910, relative to notation on records of local office. 39-150

3. Corroboration is not a prerequisite to its recognition as a proper basis for inquiry where the facts as charged, if true, are a matter of record of which judicial notice must be taken by the officers of the Land Department. 22-345; 25-550; 27-53

4. Filed by a State against the allowance of an entry should be corroborated, in accordance with the requirements of Rule 3 of Practice. 22-629; 23-313

5. A protest may be dismissed if not properly corroborated, but such action will not prevent consideration of a second, presented in proper form. 17-108

6. Does not justify a hearing if a *prima facie* case calling for cancellation is not made out. 25-125

7. Should set forth all material and issuable facts with sufficient particularity to apprise the challenged party of the definite nature of the case and enable him to defend without danger of surprise by any fundamental question. 37-401

8. A protest against a nonmineral selection, charging that the lands are mineral in character, on which a hearing was held prior to any withdrawal or classification of the land as oil, should be disposed of on the proof submitted at such hearing, and a subsequent withdrawal or classification of the lands as oil may not properly be considered in passing upon that protest. 40-321

PROTESTANT.

See FINAL PROOF, VIII; MINING CLAIM, IX; PRACTICE, XI.

1. A distinction should be made between protestants under mineral entries and those in agricultural entries. 13-509

2. One who prefers charges against an entry, furnishes evidence in support thereof, and pays the cost of his own testimony is not a protestant, but a contestant, even though he formally waives the preference right of a successful contestant. 13-722

3. Against preemption final proof acquires no preferred right of entry in event of cancellation of the declaratory statement. 22-188

4. Should not be heard on a charge that is at such time the subject of investigation by the Government. 19-442

PUBLIC LAND.

See SURVEY; WORDS AND PHRASES CONSTRUED, 70-73.

I. Generally.

II. Price.

III. Illegal Inclosure.

I. Generally.

1. Is land subject to sale or other disposal under the general land laws. 1-393

2. Is that over which the surveys have been extended or over which it is contemplated to extend them. 10-369

3. "Public lands" in the act of May 14, 1880, means "public" in the sense that no one else has any claim to them. 6-516

4. Islands and all accretions thereto are. 1-596

5. The department has no jurisdiction over lands formed by accretion to a tract to which the Government has no title. 7-255

6. Land formed by accretion belongs to the owner of the adjacent land. 1-596; 6-20; 7-255

7. The bed of nonnavigable streams and shallow lakes is not, but belongs to the adjacent riparian owners. 13-588, 724

8. Land within the channel of a meandered stream does not become, on a change of the channel. 21-429

9. Lands with definite boundaries ceded by treaty become public when said treaty is ratified. 3-302

10. Within the limits of the official survey of a private claim in excess of the amount confirmed and patented is not subject to disposition until after the survey has been duly amended. 5-660

11. On cancellation of an entry the land becomes vacant public land, and the department has full authority to protect the same from trespass. 6-239

12. Where the claim of a settler (preemption) is rejected finally, further occupation of the land by the claimant is a trespass. 2-505

13. May be withheld from entry pending an examination in the field of the survey. 9-12

14. Lands in reservation for any purpose are not public lands within the operative effect of a subsequent grant of Congress, although not in terms excepted from the grant. 33-13

15. An order by the proper executive department directing the withdrawal of public lands from disposition is a bar to appropriation of the land under the public-land laws. 31-193

16. Withdrawals may be made for present public uses, or disposition in a special way, or in anticipation of future uses or disposal. 31-193

17. There is no authority to make such Executive withdrawal of public lands in a State as will reserve the waters of a stream flowing over the same from appropriation under the laws of the State, or will in any manner interfere with its laws relating to the control, appropriation, use, or distribution of water. 32-254

18. The Land Department will take no action looking to disposal of public lands pending congressional consideration of questions before it for its special order. 32-492

19. The Secretary has no power to withdraw from disposal under the general land laws public lands occupied and improved by a town for the purpose of storing and conducting, a water supply to the town, pending congressional action authorizing the town authorities to make entry of the same; but action upon any application to enter such lands may be suspended by the Land Department until the town authorities have been afforded opportunity to secure the contemplated legislation. 34-144

20. Not withheld from settlement for an unreasonable period pending the assertion of a claim thereto. 4-313

21. Should not be withheld from settlement on account of indefinite Indian claim. 5-557

22. Improperly withdrawn for railroad purposes restored to the public domain. 4-459

23. Lands excluded from the survey of the pueblo of San Francisco withheld

from disposition pending inquiry as to their actual status. 3-528

24. Open to entry after cancellation on contest, subject only to right of contestant. 4-534; 7-186; 9-70, 491

25. Land within the limits of a railroad grant, but excepted therefrom, is subject to entry without restoration notice. 9-213

26. A decision of the Supreme Court of the United States that annuls a patent, and restores title to the Government, renders such lands subject to settlement, in the absence of any prohibition; but it is competent for the Land Department to determine when said lands shall be open to entry, and make due provision therefor. 26-350

27. A decision of the department directing that a tract that had been embraced in a railroad indemnity selection should be held "subject to entry by the first legal applicant," operates to restore such tract to the public domain as effectually as though restored to settlement and entry. 26-538

28. So long as the title to public land remains in the Government, the Land Department, and the Secretary of the Interior as the head of that department, are authorized to try and determine the rights of claimants therefor; and this power of necessity carries with it the power and involves the duty of determining whether such title remains in the Government or has been granted away from it. 31-193

29. Until the legal title to public lands passes from the Government, inquiry as to all equitable rights comes within the cognizance of the Land Department, and the Secretary of the Interior, as the head of that department, may take such action with reference thereto as to him seems in accordance with law. 33-13

30. A controversy involving a claim to public lands is never finally settled until it receives such adjudication as removes the land from the jurisdiction of the Land Department, and one Secretary of the Interior has no authority to bind his successor to either a rule of administration or interpretation of a statute involving the disposition of the public lands. 33-13

31. In the administration of the public-land laws the Land Department has no

authority to determine on their behalf alleged rights of claimants thereunder except where such claimants seek to obtain the legal title to the lands claimed; and where a claimant seeks to obtain the legal title the inquiry by the Land Department is directed to questions affecting his right to have such title conveyed to him and not to questions relating to possessory or other rights unrelated to and disconnected with his application for the legal title.

34-276

32. By virtue of its jurisdiction over the public lands, involving their care as well as their disposition, the Land Department may at any time, of its own motion or at the instance of others, wherever it appears or is charged that claims asserted under any of the public-land laws are merely colorable and are used to cloak unlawful timber cutting, illegal fencing, the wrongful exclusion of *bona fide* settlers or claimants, or otherwise to the subversion of those laws, inquire into and determine those questions and thereupon take such further action as may be appropriate and necessary to enforce its jurisdiction and preserve the rights and interests of the public. 35-565

33. The Government is a party in interest in every case involving disposal of the public lands, and when such lands are sought to be acquired under any of the public-land laws it is not only within the power but it is the duty of the Land Department to see that the lands are disposed of according to law, and not in violation or evasion of the law. 36-66

34. Instructions of July 23, 1910, under act of June 25, 1910, authorizing patents to equitable claimants to certain lands in Wisconsin. 39-111

35. Scheme for opening to entry lands formerly embraced in Santee Sioux Reservation. 3-534

36. Plan for opening to entry lands formerly reserved under the Nolan claim. 4-479

37. A lot made by uniting a small and presumably unsalable tract to an adjoining subdivision in another quarter section is a legal subdivision of the public land. 2-460

38. "Public-land strip" not attached to any land district. 5-384

39. Held under a quitclaim deed from the State is not excluded from appropriation. 12-519

40. Wherever, by act of Congress, provision is made for disposal of public lands of a designated class and character, selection or entry thereof under such act can not lawfully be permitted until the lands sought to be acquired are shown to be of the class and character subject to disposal thereunder. When the evidence to enable such determination to be made does not appear from the Land Office records it must be furnished by those who seek title under the act. 31-288

41. Under proceedings in the Land Department to acquire title to public land, no rights in the land become vested in the party seeking title until he has performed all the conditions and fulfilled all the requirements necessary to establish his right to a patent. 31-288

42. The disposition of the public domain lies within the exclusive jurisdiction of Congress, which alone has the power to declare how the United States may be divested of title; and unless title is passed by reason of some law of Congress, or by the authorized act of some official done in accordance with the direction of some act of Congress, it still remains in the Government, and no mere declaration or expression of opinion by any officer of any of the executive departments can operate to divest such title. 37-463

Limitation in Act of August 30, 1890.

43. Instructions of May 27, 1905, relative to maximum amount of land that may be acquired by a single applicant under the limitation fixed by the act of August 30, 1890. 33-605

44. Instructions of May 27, 1905, under act of August 30, 1890, amended. 33-606

45. The limitation in acreage prescribed by the act of August 30, 1890, applies equally to all the land laws and restricts the applicant to 320 acres in the aggregate. 12-81

46. The limitation in the act of August 30, 1890, as to the amount of land that may be acquired by any one person under the public-land laws, applies only to the

acquisition of title, and not to the amount of land that may be entered or filed upon under such laws. 32-646

47. The provision in the act of August 30, 1890, limiting the amount of land to which title may be acquired by any one person to 320 acres, as construed by the act of March 3, 1891, applies to all lands acquired under any of the land laws except those relating to mineral lands. 33-539

48. The act of August 30, 1890, is prospective, and the right to secure 320 acres is not affected by the fact that the applicant acquired a like amount prior to said act, if otherwise entitled to enter such amount. 12-81

49. In determining the quantity of land to which title may be acquired within the limitation in the act of August 30, 1890, as amended March 3, 1891, lands secured by applicant under section 3, act of September 29, 1890, should be taken into consideration. 33-370

50. The provisions in the act of August 30, 1890, limiting the amount of land to which title may be acquired by any one person to 320 acres, has no application to private cash entries under section 2354, R. S. 34-242

51. A right initiated but not consummated under the desert-land act does not, under the limitation in the act of August 30, 1890, exhaust the right of the entryman; and if such entry be subsequently relinquished, it constitutes no bar to the exercise of the right granted by the homestead law. 33-580

52. The area embraced in a homestead entry relinquished prior to the acquisition of title does not come within the provision of the act of August 30, 1890, limiting the amount of land that may be acquired by any one person under the public-land laws to 320 acres. 38-310

53. One asserting claim by virtue of entries under the public-land laws to 320 acres of agricultural land is disqualified to enter or make or maintain a valid settlement upon other agricultural public land; and no such rights are acquired by the filing of an application to make homestead entry, by one so disqualified, as will, upon his subsequently becoming qualified,

affect the rights of an intervening qualified applicant. 35-524

54. A homestead entry for 40 acres, made by one who had theretofore acquired title under the public-land laws to 288.17 acres, allowed to stand, under the rule of approximation, notwithstanding the provision of the act of August 30, 1890, that no person shall be permitted to acquire title to more than 320 acres in the aggregate under all the public-land laws. 38-453

55. Lands embraced in entries made prior to the act of August 30, 1890, or in settlements made prior thereto and subsequently carried to entry, are not considered in determining the quantity of lands a settler or entryman may acquire under the limitation in that act. 38-319

II. Price.

See INDIAN LANDS, 284-285, 332, 383, 418-421, 443, 458-459, 494; ISOLATED TRACT, 48-51; REPAYMENT, V.

56. "Minimum" means the least price at which lands are to be sold. 4-54

57. "Minimum price," in section 2387, R. S., means the price fixed by statute. 29-503

58. The price of alternate reserved sections along the line of railroads was fixed by statute (sec. 2357, R. S.) at double minimum, which has not since been changed. 2-681

59. Instructions of March 2, 1910, with respect to price of lands within granted limits of railroad. 38-468

60. Price under the act of January 13, 1881, restoring forfeited railroad lands. Circular of April 30, 1886. 5-165

61. Price within forfeited railroad grants and lands excepted from such grants reduced to single minimum by act of March 2, 1889. Circular of March 8, 1889. 8-314

62. Discretionary authority of the Secretary in fixing price under special statute must be presumed to have been exercised with full knowledge of the true status of the land. 23-151

63. Where a reservation is opened to entry the Commissioner of the General Land Office fixes the price of the land. 5-269

64. Where the price of alternate un-granted sections is increased by statute there is no authority for reducing the price on the forfeiture of the grant in the absence of express statutory direction.

5-269

65. Within the limits of a railroad grant and reduced in price by the act of June 15, 1880, is again raised to double minimum if it subsequently falls within the limits of another grant.

11-99

66. Settlers prior to railroad withdrawal entitled to purchase at ordinary minimum.

9-404

67. Settlers prior to notice of withdrawal entitled to purchase at minimum price.

9-423

68. Decision holding for cancellation an entry at \$1.25 made in an even section prior to receipt of notice of Executive withdrawal for railroad purposes reversed.

2-557

69. The fact that entries for lands required by law to be disposed of at double minimum may have been erroneously permitted to be carried to completion upon payment of the single-minimum price will not justify the allowance of further entries for such lands at the minimum rate

38-319

70. A tract of railroad land released under the act of June 22, 1874, is subject to entry at single minimum.

1-327

71. Lands falling within the indemnity limits of a railroad grant (Northern Pacific) are not by such fact increased in price.

19-381; 24-159

72. The circular of June 29, 1887, was not intended to enhance the price of desert land covered by initial entry made prior to the promulgation of said circular.

6-145

73. Price of desert land within railroad limits is properly fixed at double minimum.

7-436; 8-368; 12-632

74. The act of March 3, 1853, fixing the price of, in railroad limits at \$2.50 per acre, was not repealed by the desert land act.

9-49; 10-541

75. The price of desert land within the primary limits of a forfeited railroad grant remains double minimum where said land is also embraced within the limits of another grant not forfeited, although

said land may be excepted from the latter grant.

12-296

76. Desert land within the granted limits of the Texas Pacific could not, prior to the act of March 2, 1889, be sold at less than double minimum.

9-271

77. The price of desert land under the law as amended by act of March 3, 1891, is \$1.25 per acre, without regard to the limits of railroad grants.

14-74; 16-170

78. By the act of March 3, 1891, amendatory of the act of March 3, 1877, the price of all desert lands entered under the amended law is fixed at \$1.25 per acre.

23-574

79. Price of desert land entered since the act of March 3, 1891, is \$1.25 per acre. If initial entry has been made on double minimum basis, credit for the excess may be allowed on final payment.

16-170

80. The provisions of the amendatory act of March 3, 1891, fixing the price of all desert land at \$1.25 per acre, are applicable to a desert entry of land made prior to said act, but not perfected, as required by law, until thereafter.

19-83; 20-406

81. The act of March 3, 1877, did not reduce the price of desert land within the limits of railroad grants to single minimum; nor did the amendatory act of March 3, 1891, operate to reduce the price of such lands embraced within entries under the original act, but on which final proof had not been submitted at the passage of the amendatory act.

23-450

82. The price of desert lands within the limits of a railroad grant, entered under the act of March 3, 1877, is not affected by the act of March 3, 1891, and such lands can only be patented on the payment of the double minimum price.

25-231

83. The price of the reserved alternate sections falling within the limits of the withdrawal made on the general route of the Northern Pacific was, by the terms of the grant to said company, fixed at double minimum.

7-495, 578; 25-309

84. Even sections within the granted limits (Northern Pacific) could not be sold at less than \$2.50 per acre after the map of the general route was filed.

6-507; 14-377

85. Where an entry within railroad limits was allowed at single minimum the entryman will be required to make a fur-

ther payment of \$1.25 per acre or relinquish one-half of the land entered. 6-507

86. Lands not passing under a railroad grant but within its limits should be raised to double minimum. 3-158

87. Under a railroad grant which provides that "the sections and parts of sections which by such grant *remain* to the United States * * * shall not be sold for less than double minimum," the sections so *remaining* are identified when the map showing the definite location of the line of road is filed and accepted, and from such time are subject to sale only at the double minimum price. 28-25

88. Land within the common limits of the Chicago, Minneapolis & Omaha and Wisconsin Central roads, under the act of May 5, 1864, and excepted from the operation of the grant to the latter company by the indemnity withdrawal made under the grant of 1856, is properly rated at double minimum price. 20-62

89. An even-numbered section lying within the common granted limits of two railroad grants remains at double minimum though one of such grants may be forfeited. 24-9

90. Even sections raised in price though reserved when the grant took effect. 3-477

91. The grant to the Northern Pacific expressly limits the increase in price to the "reserved alternate sections," and such increase does not, therefore, extend to odd-numbered sections excepted from the grant. (See 12-127.) 8-58

92. Odd sections or parts of such sections within the primary limits of the Northern Pacific and excepted from the grant by existing entries are properly held at double minimum if such entries are subsequently canceled. 12-127

93. Odd-numbered sections within the primary limits of a railroad grant, but excepted from the operation thereof, must be held at double minimum where such grant requires the alternate reserved sections to be sold at said price. 22-673

94. Lands within the primary limits of the grant of May 12, 1864, in aid of the McGregor and Missouri River Railroad, which were erroneously included within the meander lines of a lake, are not for that reason excepted from the provisions of said act increasing in price the alternate

sections along the line of road therein provided for. 32-197

95. Covered by the settlement of a pre-emptor prior to the filing of the map of general route (Northern Pacific) is not enhanced in price as against the settler. 8-318

96. The act of March 27, 1854, providing that settlers on "public lands which have been or may be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to preemption at the ordinary minimum," refers to withdrawals made in anticipation of proposed roads, and not such as are made after the road has been definitely located. 28-25

97. A mere *de facto* appropriation of a tract for city purposes, by act of a State legislature, is not a legal appropriation of Government land, and does not defeat the provision in the grant to the Northern Pacific raising the alternate reserved sections to double minimum. 21-331

98. Though certain odd sections within the limits of the Northern Pacific Railroad did not pass by the grant because at its date within the limits of the Bitter Root Valley Reservation, they are nevertheless fixed at double minimum. 2-676

99. Notwithstanding the act of June 5, 1872, opening the lands in Bitter Root Valley above Lolo Fork to settlement, fixed the price of \$1.25 per acre, the even-numbered sections within the primary limits of the grant to the Northern Pacific were, under section 2357, R. S., properly rated at \$2.50. 38-499

100. On the theory that the Northern Pacific is entitled to indemnity for lands within reservations existing at date of the grant, if the even sections are sold at single minimum, the Government suffers financial loss. 2-676

101. Lands within the primary limits of the grant to the Oregon Central company included within the forfeiture act of January 31, 1885, are by the express terms of said act reduced to single minimum, and such reduction extends also to said lands within the overlapping primary limits of the subsequent grant to the Northern Pacific. (See 29-166.) 16-493

102. Under the act of September 29, 1890, forfeiting the odd-numbered sections granted to the Northern Pacific within the overlapping primary limits of the Oregon & California road, no rights of the latter road are recognized, and it therefore follows that the even-numbered sections within said forfeited limits are subject to disposition at the minimum price. (See 29-166.) 17-285

103. The price of lands within the limits of the forfeited grant of the Atlantic & Pacific in New Mexico is fixed at \$2.50 for both odd and even sections. 5-269

104. The act of July 6, 1886, forfeiting the grant to the Atlantic & Pacific, and restoring the lands to the public domain, does not constitute the bringing of a reservation into market within the meaning of section 2364, R. S.; and as said lands have never been raised in price they are now subject to disposal at \$1.25 per acre, irrespective of the fact that they are also within the limits of the grant for the main and branch lines of the Southern Pacific. 27 241

105. Alternate reserved sections within the grant along the constructed main and branch lines of the Southern Pacific, and also within the forfeited Atlantic & Pacific grant, must be held at double minimum, irrespective of whether the Southern Pacific can acquire title to any or all of the odd-numbered sections within said conflicting limits. 28-479; 29-166; 30-111

106. The price of restored lands within the limits of the forfeited Texas Pacific grant is fixed at double minimum. 6-157

107. All lands subject to entry within the Texas Pacific grant were double minimum in price from the date of withdrawal on general route to the passage of the act of March 2, 1889. 8-530

108. The price of lands within the forfeited Texas Pacific grant remained at double minimum until the act of March 2, 1889. 14-8

109. Lands in the San Francisco district withdrawn for the Central Pacific Railroad were held not to inure to that company; before restoration they were embraced in the grant to the Southern Pacific Railroad, but were held to be excepted from the grant; the odd sections

were ordered sold at minimum and the even sections at double minimum.

2-679, 680

110. Lands raised to double minimum on account of railroad grants and put in market prior to January, 1861, are reduced to single minimum by section 3, act of June 15, 1880; said act required public offering before entry; where sales were afterwards allowed without such offering, or made at double minimum, they were confirmed by act of March 3, 1883. 2-677

111. Odd-numbered sections, excepted from the grant to the Union Pacific and sold to grantees of the company, under section 5, act of March 3, 1887, are properly rated at double minimum. 21-318

112. Price of land under a commuted timber-culture entry authorized by act of March 3, 1891, is \$1.25 per acre without reference to limits of railroad grants. 14-75

113. In the location of agricultural college scrip issued under the act of July 2, 1864, the scrip must be computed at single minimum. 14-377

114. One who transfers an entry under the act of October 1, 1890, from single minimum to double minimum land, must pay the difference in price. 21-427

115. An excess in the area covered by a homestead entry may be paid for at single minimum where the land, though double minimum at date of entry, is, prior to payment, reduced to single minimum by act of March 2, 1889. 13-225

116. Section 4, act of March 2, 1889, does not reduce the price of land within a railroad grant if the portion of railroad opposite thereto was completed prior to passage of said act. 11-99

117. Though the language in the railroad grant of March 3, 1863, defining the limits of the grant, and that measuring the limit within which the even sections are increased in price, differs in terms, the effect is to fix but one limit and increase the price of even sections therein. 13-572

118. The minimum price of isolated tracts in alternate reserved sections within a railroad grant is, by section 2455, R. S., as amended, reduced from \$2.50 to \$1.25 per acre. 28-214

119. Lands within an abandoned military reservation subject to disposition

under the act of August 23, 1894, belonging to the single minimum class, must be sold at \$1.25 per acre, though appraised at a less figure. 23-14

120. The inadvertent inclusion of a tract of Sioux Indian lands in a homestead entry, at a time when the land was rated at 75 cents per acre, which entry was subsequently amended to describe in lieu of the tract entered the tract actually settled upon and intended to be taken, does not have the effect to fix the price of the erroneously entered tract at 75 cents, the status thereof remaining the same with respect to price as though the erroneous entry had never been made. 38-313

121. The act of April 23, 1904, providing for disposition of the Rosebud Indian lands, fixed the price of all lands entered or filed upon within the first three months after opening at \$4 per acre, those entered or filed upon during the second three months at \$3 per acre, and those entered or filed upon after the expiration of six months at \$2.50 per acre.

Held: Where a tract was entered during the first three months the price was thereby fixed for all time at \$4 per acre, and in event of cancellation of the entry it could not thereafter be again entered except upon payment of such price, regardless of whether the second entry was made during or after the expiration of the first three-month period. 38-213

III. Illegal Inclosure.

122. Circulars of April 5 and July 19, 1883. 1-683, 684; 2-640

123. Circular of January 18, 1907, under act of February 25, 1885, relating to unlawful occupancy. 36-142

124. It is illegal to fence a large tract of public land and to attempt to exclude settlers from it. 2-178; 4-392

125. Persons desiring to become *bona fide* settlers may tear down the fences illegally surrounding such tracts. 2-638

126. Injunctions will lie in the courts for unlawfully fencing the public lands. 2-798

127. The inclosure of any portion of, is illegal unless made with a *bona fide* intent to claim the same under the public land laws. 13-702

128. An illegal inclosure is no bar to the acquisition of a settlement right. 13-702

129. Unauthorized inclosure is not an appropriation under which any right can be secured. 29-363

PUBLIC SALE.

See ISOLATED TRACT.

1. Has its origin in the act of 1820 as a condition precedent to private entry. 4-156

2. "Sales of public lands," in all laws relating to public lands, mean cash sales; fees are not part of the price of land. 2-696

3. Public lands will not be opened under policy of the department to cash purchase under public offering. 3-149

4. There is no general statutory authority for disposition of public lands at auction; authority is given for such action by special statute in each case. 10-652

5. The Commissioner of the General Land Office is authorized by section 2455, R. S., to order into market isolated tracts of unoffered land. 10-615; 16-496

6. Authority of commissioner to order into market isolated tracts of unoffered land not abridged by act of July 15, 1870. 8-421

7. Authority of commissioner to offer isolated tracts at public sale held not to apply in localities where there remains a considerable quantity of unoffered land. 3-149

8. The commissioner's authority to order into market isolated and disconnected tracts of land extends to a late military reservation reduced to 148.11 acres (Fort Brooke, Fla.). 2-605

9. An isolated tract surveyed at the instance of a person who has deposited the expenses of advertising and offering under section 2455, R. S., is not subject to soldiers' additional entry. 2-242

10. An order directing sale of an isolated tract excludes the land covered thereby from settlement, filing, or entry. 12-397; 14-458

11. Land chiefly valuable for timber will not be ordered into market as an isolated tract under section 2455, R. S. 3-149

12. The disposition of an isolated tract surveyed as an island is not precluded by the fact that such land is not at all times surrounded by water, if there is no claim under riparian ownership. 12-97

13. The only statutory authority for the proclamation of May 3, 1870, for the offering of certain lands, is found, if at all, in the last clause of section 13, act of July 22, 1854, and as said clause is open to such construction it must be presumed the President acted thereunder. 10-652

14. The legality of the offering under the proclamation of May 3, 1870, of certain lands in New Mexico, held *res judicata* in view of the lapse of time and the expenditures of purchasers on the faith of such offering. 10-652

15. Lands covered by *bona fide* settlement claims can not be offered at public sale under the act of March 3, 1883, regulating the disposition of lands in Alabama. 3-169

16. The public sale extinguished by the preemption right because of the failure to make proof and payment prior thereto, though the land was in fact not offered thereat, being mineral. (See 11-445.) 2-525

PURCHASER.

See ALIENATION; CONFIRMATION; HOME-STEAD, XIV; PRACTICE, IX, d; RAILROAD LANDS; STATES AND TERRITORIES, 43-84.

RAILROAD GRANT.

See FINAL PROOF, 277-281; RAILROAD LANDS; RIGHT OF WAY, II; WAGON ROAD GRANT.

I. Generally.

II. Place and Quantity.

III. Conflicting Grants.

IV. Definite Location.

V. Withdrawal.

VI. Indemnity.

VII. Selection.

VIII. Lands Excepted.

IX. Mineral Land.

X. Indian Title.

XI. Rights of the State.

XII. Relinquishment.

XIII. Act of June 22, 1874.

XIV. Act of April 21, 1876.

XV. Adjustment.

XVI. Forfeiture.

XVII. Certification and Patent.

I. Generally.

1. Circular of September 22, 1902, under acts of June 22, 1874, August 29, 1890, and July 1, 1902, relative to settlers on railroad and wagon-road grants. 31-424

2. Where the language of a grant is doubtful the construction must be against the grantee. 1-331, 336, 362, 368;

3-243; 4-216, 429; 5-49, 380

3. Rights under, must be asserted in accordance with established procedure. 1-466

4. Rights under, controlled as to acreage by return of the surveyor; sections or fractional sections must be regarded as containing the exact number of acres expressed in the return. 17-88

5. The maps, tract books, and official plats of survey, on file in the General Land Office, must determine the location of railroad lines, and the distances therefrom of lands in dispute between railroad companies and settlers. 24-180

6. The construction and operation of a railroad is sufficient to put subsequent settlers on notice as to the rights of the road. 6-322

7. When the language imports a present grant, title passes by the act and attaches to the grant, and becomes complete and perfect when precision and identity are given to the particular tract by selection or location. 2-493

8. Lands within an unforfeited grant not subject to entry though the road is not constructed within the period specified. 8-589

9. An applicant for land can not set up failure to construct a road within the statutory period, nor the fact that the company in constructing its road deviated from the original line, if the land claimed is within the granted limits of the road as originally located and finally constructed. 21-471

10. An applicant for a tract falling within the limits as adjusted on the map of definite location, can not be heard to allege that the land is in fact outside the limits of the grant as shown by actual

measurement from the line of road as constructed. 22-542

11. Priority of right as between a settler and the company should be determined by hearing before the local office. 4-256; 5-474; 10-281

12. In determining priorities in a controversy arising upon the filing of a list of selections upon the day the plat of survey of the township in which the selected lands are situated was filed and the presentation, on the same day, of homestead applications for said lands, the actual time of the presentation of the claims will be recognized. 31-151

13. In cases of conflict as to the right to lands within either the primary or secondary limits the beneficiary should be notified, with due opportunity to be heard. 10-684; 13-464

14. Rights under, not affected by a decision against one claiming as a grantee of the company in the absence of notice to said company or proof of the alleged transfer. 9-71

15. Where lands have been erroneously awarded to a railroad company by decision of the General Land Office, the Secretary may review such action without regard to the manner in which the matter is brought before him. 23-433

16. Where a company designates an attorney upon whom all notices and papers shall be served, jurisdiction is not acquired in proceedings involving title under the grant in the absence of notice to such attorney unless said notice is waived. (See 22-184, 688.) 15-247

17. The act of July 27, 1866, did not confer upon the Atlantic & Pacific company any grant of lands within the Indian Territory. 13-373

18. The failure of the company (Southern Pacific) to establish the connection named in the granting act and its possible effect upon the grant. 4-218

19. The amount due the Government from the 5 per cent earnings of the Kansas Pacific ascertained upon the mileage basis. 3-585

20. Lands opposite the unconstructed portion of the Northern Pacific road from Wallula to Portland, forfeited by act of September 29, 1890, and within the limits of The Dalles wagon road, will not be

suspended from entry pending judicial action that may be taken on behalf of said wagon road. 16-459; 17-432

21. Action suspended on all entries allowed within the conflicting limits of the grants for The Dalles Military Wagon Road Co. and the Northern Pacific Railroad Co., pending a judicial determination of the status of said lands. 24-332

22. The enlargement of the grant to the Union Pacific made by the act of July 2, 1864, is operative as to lands which were at the date of said act public lands, and were otherwise subject to the grant on definite location. 28-128

23. The act of July 2, 1864, enlarging the grant of 1862 to the Union Pacific, did not make a new grant as to the lands included within the 10-mile limits. 28-575

24. Until the completion, in 1872, of the Union Pacific bridge across the Missouri River from Omaha to Council Bluffs, the period of "three years after the entire road shall have been completed," during which the company was authorized to sell or dispose of the granted lands, did not begin to run. 29-38

25. The execution of the "sinking-fund mortgage" on the granted lands by the Union Pacific, in 1873, constituted an authorized disposition of said lands within the meaning of the last clause of section 3, act of July 1, 1862. 29-38

26. The map and diagram, approved by the department April 14, 1894, defining the limits of the Indian reservation of 1855, in the "Bitter Root Valley above the Lolo Fork," will be recognized and followed in determining the extent of said reservation as against the subsequent grant to the Northern Pacific. 28-305

27. Under the act of March 1, 1877, of the legislature of Minnesota, the protection extended thereby to settlement claims can not exceed 160 acres to any one settler. (St. Paul, Minneapolis & Manitoba.) 28-501

28. The Great Northern Railway Co. recognized as the successor in interest to the land-grant rights of the St. Paul, Minneapolis & Manitoba Railway Co., and directions given that patents for all earned lands the ultimate title to which remains in the United States shall issue to that company. 36-326

29. While the joint resolution of May 31, 1870, provides that all lands thereby granted to the Northern Pacific which shall not be sold or disposed of, or remain subject to mortgage, at the expiration of five years after completion of the entire road, shall be subject to settlement and preemption, the Land Department is without authority, in the absence of specific legislation, to authorize the sale or entry of any such lands which have been earned by the company and are still held by it. Where such lands have been patented to the company the jurisdiction of the Land Department has terminated, and where earned but not patented it is the duty of that department to issue patents therefor, leaving for determination by the courts questions arising under said provisions. 38-77

II. Place and Quantity.

See VII HEREOF.

30. Whether one of quantity or in place determined by the price fixed on the sections not granted. 5-137

31. The additional grant of March 3, 1865 (Minnesota), was one of quantity requiring selection. 3-527; 4-232, 428

32. The grant of four additional sections by the act of March 3, 1865 (Minnesota), was of lands in place. 5-565; 6-326; 7-151

33. Under the grant of March 3, 1857, as extended by the act of March 3, 1865, the right to take lands as granted lands is confined to the 10-mile limit. 7-151

34. The grant of June 3, 1856, for the Ontonagon road is one of "place" and not of "quantity." 13-464

35. The words "to be selected within 20 miles from the line of said road," in the act of July 25, 1866, do not operate to make the grant a float, but serve only to define the limits of the grant. 5-135

36. The joint resolution of May 31, 1870, did not make a new grant for the Cascade branch of the Northern Pacific, and as to lands within the place limits along said line their status under the grant of July 2, 1864, must determine the right of the company thereto. 29-224

III. Conflicting Grants.

See VII, XV, XVI, HEREOF.

37. Priority of grant determines the right to land lying within common granted limits. 1-332; 5-135; 6-443, 677, 816

38. Overlapping lands derived under the grant of 1864 are held by the Omaha company and Wisconsin Central as tenants in common. 6-195

39. The definite location and withdrawal under the act of June 3, 1856, reserved the lands within the 6 and 15 mile limits from the grant of 1864 made for the benefit of the Wisconsin Central. 6-195

40. The relocation of the West Wisconsin Railway, though authorized, waived all claims under the first location, and no claims of said company under the act of 1864 can conflict with those of the Omaha company derived under the grant of 1856, the location of 1858, and the construction of its road. 6-195

41. Lands reserved by Executive order for indemnity purposes under the grant of June 3, 1856, are by the express terms of section 6, act of May 5, 1864, reserved and excluded from the grant made by section 3 of said act. 10-63

42. The act of May 5, 1864, does not confer any rights upon the Wisconsin Central where its grant overlaps the limits of the prior indemnity withdrawal, made under the grant of 1856. 10-63

43. The grant of May 5, 1864, of which the Wisconsin Central is the beneficiary, and that of July 2, 1864, to the Northern Pacific, did not take effect upon lands within the indemnity withdrawal under the grant of June 3, 1856. 10-147

44. The act of May 5, 1864, operated upon the indemnity limits of the grant of June 3, 1856, so as to convert 4 miles of said limits into place limits under said act of 1864 in favor of the roads common to both grants. 10-63

45. The status of lands withdrawn for indemnity purposes under the grant of 1856, for the Omaha company, and afterwards falling within the primary limits of the grant of 1864, to the Wisconsin Central, was changed by operation of the latter grant, and definite location thereunder, from lands reserved for indemnity pur-

poses, to granted lands, and, on the failure of the latter company to construct its road opposite said lands, the grant therefor was forfeited, and the title restored to the United States. 23-58

46. By the act of June 3, 1856, title to land in intersecting limits passed to the State of Alabama upon definite location of the road first located. 2-476

47. In the adjustment of, questions of moiety do not arise except in the case of grants made by the same act for different lines of road that overlap. 18-255

48. The grant to the Atlantic & Pacific and Southern Pacific was by the same act, each company being entitled thereunder to an undivided moiety of the odd sections, subject to the grant and within common granted limits, without respect to priority of location or construction. 6-349

49. When grants are made for different roads by the same statute, priority of location gives no priority of right. 8-38

50. Where the limits of the primary grants which are settled by location conflict the roads take the sections within the conflicting limits of primary location in equal undivided moieties without regard to priority of location or construction. 8-38

51. Within the common primary limits of two grants made by the same act, a moiety is granted on account of each road, and where for any reason the State, being the grantee under both grants, is estopped from claiming on account of one of the grants, the United States and the State become tenants in common, each entitled to a moiety, of the lands so situated. 30-319; 32-113

52. Where the primary limits of one company conflict with the indemnity limits of another and both derive their grants from the same act the former is entitled to the lands in question without regard to priority of location or construction. 11-607

53. Where grants to different roads are made by the same statute, priority of right in conflicting indemnity limits is determined by priority of selection. 4-426; 8-38

54. Directions given that all action affecting lands within the conflicting limits of the grant made by the act of July 2,

1864, to the Northern Pacific and the grant made to the same company by the joint resolution of May 31, 1870, be suspended until further directions in the matter. 31-219

55. A reservation on account of a prior grant will defeat a later grant, like that made in aid of the Northern Pacific, without regard to whether the lands are needed in satisfaction of the prior grant. 31-32

56. For the St. Vincent extension of the St. Paul, Minneapolis & Manitoba Railway is a new grant and can not, therefore, be adjusted in connection with the other grants as an entirety, but must be adjusted separately, according priority of right to the prior grant in case of conflict. (See 32-21.) 13-349, 353

57. Priority of selection determines the right to odd-numbered sections within the overlapping indemnity limits of the St. Paul, Minneapolis & Manitoba, St. Vincent extension, and the Northern Pacific, and not within the withdrawal on general route of the latter company. 23-454

58. The priority of right on the part of the Northern Pacific as against the Manitoba company, recognized by the supreme court in *Northern Pacific R. R. Co. v. St. Paul and Pacific R. R. Co.* (139 U. S., 1), is not applicable to lands within the indemnity limits of the former that were not included in the withdrawal therefor on its map of general route filed in 1870. 14-624; 21-462

59. At the time of the filing and acceptance of the map of definite location of the St. Vincent extension of the Manitoba road there was no reservation of lands for the benefit of the Northern Pacific outside the withdrawal on general route, and the primary limits adjusted to definite location, that would defeat the grant to the Manitoba company. 24-195; 27-674

60. The grant of lands made to the State (Alabama) by sections 1 and 6, act of June 3, 1856, are separate grants, and should be so adjusted. A certification in excess of lands in aid of the Wills Valley road does not preclude certification on behalf of the Northeast and Southwestern road. 17-70

61. The grant of May 12, 1864, to aid in the construction of the two roads

named therein was a grant in place and of a moiety for each road within the common granted limits. 6-47, 54

62. Under the grant of July 4, 1866, to the State of Minnesota, in which indemnity is provided where the numbered sections have been "reserved by the United States for any purpose whatever," at the time the line of road is definitely located, no rights attach to lands included in the prior indemnity withdrawal made on behalf of the grant to the same State under the acts of March 3, 1857, and May 12, 1864, and aside from said indemnity withdrawal, if the lands are needed in satisfaction of the prior grant they were appropriated for that purpose as against the grant of 1866. 27-406

63. Lands falling within the limits of the Texas Pacific were excepted from the grant to the Southern Pacific. 4-215

64. The sole right accruing to the Texas Pacific Railroad Co. under the act of March 3, 1871, prior to the forfeiture of its grant by the act of February 28, 1885, was a prospective right in the odd-numbered sections embraced within the withdrawal made for its benefit upon the filing of its map of general route; and as no map of definite location was ever filed, nor its line otherwise definitely located, neither its place nor indemnity limits were ever defined, and only the odd-numbered sections so withdrawn conflicted with and were excluded from the branch-line grant to the Southern Pacific Railroad Co. under section 23 of the act of March 3, 1871. 40-632

65. Land in common limits of Central Pacific and California & Oregon roads, if excepted from the grant to the former, passed to the latter, if public, when the map of survey was filed. 15-484

66. Lands within the indemnity limits of the Atlantic and Pacific were excepted from the grant to the Southern Pacific. 6-679, 812, 816

67. Land within the subsisting granted limits of the Atlantic and Pacific when the map of the designated route of the Southern Pacific was filed is excepted from the grant to the latter company. 8-282

68. The odd sections within the primary limits of the grant of June 10, 1852, excepted therefrom, but withdrawn under

said grant, having been "offered" after the adjustment thereof and before the grant of July 27, 1866, were not reserved from the operation of the latter. 8-165

69. In the overlapping primary limits of the Northern Pacific and Oregon & California roads east of Portland the grant is to the former under the act of July 2, 1864, and is forfeited by the act of 1890 to the extent of the withdrawal made under section 6, act of 1864, and under said act of forfeiture no rights of the Oregon road are within said conflicting limits. 14-187

70. The act of June 3, 1856, granting lands for the Ontonagon road, also provided for a similar grant to another line, and where the granted limits overlap each company takes an undivided moiety. 13-464

71. The Ontonagon Co. is entitled to the odd sections within its primary limits coterminous with the constructed road and outside the primary limits of the Marquette road and a moiety of the odd sections within the common granted limits of the two roads coterminous with the constructed road of the Ontonagon Co. 13-464

72. Lands within the San Francisco, Cal., district did not inure to the Central Pacific although withdrawn; prior to restoration they were embraced by the grant to the Southern Pacific, but it was held that they were excepted therefrom. 2-679, 681

73. The lands west of range 38 west within the granted limits of the Hastings and Dakota grant and indemnity limits of the Manitoba were free from the claim of the latter at the date of definite location under the former, and hence passed thereunder. 13-440

IV. Definite Location.

74. A line of road is definitely located when the map thereof is filed and the Secretary of the Interior gives his consent and approval to such location. 5-661

75. Date of survey of the road in the field no longer accepted as definite location. 2-484; 5-62

76. Line fixed by definite location may not be changed except by legislative authority. 2-488; 6-195, 209

77. Rights that attach by definite location are absolute until forfeiture is declared. 9-246

78. After a formal definite location, rights acquired thereby can not be disturbed by departmental action. 5-661

79. A company is not entitled to the benefit of two locations of its road, and where the limits have been readjusted under an amended location, and the changed limits have been recognized, it must be held, as to the portion of the road so changed, that the right of the company attached as of the filing of the amended location. 26-593; 30-241

80. The fact that lands are unsurveyed does not except them from the operation of a, on definite location. 24-180

81. Definite location of the line of road excludes the subsequent acquisition of settlement rights on unsurveyed lands subject to the grant. 10-136

82. Under the former rulings of the department it was held that a line of road was not definitely fixed where it passed over unsurveyed land. 5-356

83. When a route is adopted by the company and a map designating it is filed with the Secretary of the Interior (as required by the granting act) and accepted by that officer, the route is established; it is, in the language of the act, "definitely fixed." 2-481

84. The right of the State and of the company attached to the granted lands when the route of the road was definitely fixed (i. e., when the map was filed and accepted). 2-483

85. Locality and quantity of grant fixed by the road as made or located. 5-468

86. A deflection from the line of definite location in the construction of the road does not change the location of the grant or make it operative upon lands not affected by the definite location. 6-54, 209, 565

87. The location of one of two roads provided for in same grant held preliminary and not precluding change if necessary to comply with statutory requirements as to course and direction of said roads. 6-54

88. The construction of a road on the line of "general route" will not cause the map thereof to be treated as that of "definite location" unless so offered. 5-79

89. The acceptance of the completed sections between San Jose and Sacramento determines the date when the line was "definitely fixed" (Central Pacific). 5-62, 157

90. Right of the California & Oregon Railroad Co. attached on filing map of survey in the General Land Office. 4-484

91. No direct authority for the appointment of the commission to determine the line of definite location between the completed portions of the Central and Union Pacific. 5-661

92. The status of land at the date of definite location determines whether it is subject to the grant. (See 15-36.)

2-477; 5-62, 140, 155, 277, 397;
6-356; 9-402; 10-167; 11-91

93. The right of the road under its grant attaches to lands that are disembarrassed at definite location though said lands are reserved at the date of the grant. (See 15-36.) 2-477;

5-62; 6-356; 7-207, 223, 241

94. Status of land at definite location determines whether it is subject to the grant irrespective of any subsequent order of withdrawal. 11-186

95. The grant of July 1, 1862, and July 2, 1864, is not controlled by the designation of the general route, but by the definite location of the road, and the departure of the company in its location and construction of the road from the general route, as designated by the map of 1866, does not abridge the grant. 11-108

96. Land appropriated when the map of general route is filed, but free prior to definite location, is not held to await the same, but is subject to the first legal application (Northern Pacific). 5-333

97. Title to the odd-numbered sections within the primary limits and subject to the grant to the Northern Pacific vests at the time of definite location, and thereafter the company has power to sell any such lands, regardless of whether they are surveyed or unsurveyed. 36-526

98. The existence of a homestead entry at date of withdrawal on general route does not except the land covered thereby

from the grant if such land is public at definite location. 9-156

99. Where local officers rejected a pre-emption entry erroneously and the settler thereupon actually abandoned the land (without appeal) it became public and passed to a railroad company on definite location of the road. 2-474, 570

100. Occupancy of land within the primary limits of a railroad grant, at the time of definite location of the road, by one not shown to have had any intention of acquiring title thereto from the United States, and who subsequently disposes of his improvements and abandons the land, is not sufficient to defeat the operation of the railroad grant in favor of a party who went upon the land long after definite location and who seeks to make entry because of such prior occupancy. 30-241

101. The lines of the South & North Alabama Co. (successors) were definitely fixed on May 30, 1866, between Decatur and Calera, and on July 26, 1871, between Calera and Montgomery, the dates respectively when maps of definite location were filed in the General Land Office, notwithstanding the granting act did not require the filing of such maps. 2-481

102. The right of the California & Oregon Co. under the act of July 25, 1866, attaches to the granted sections when the map designating the line of its road is filed with the Secretary of the Interior and accepted by that officer. 12-133; 30-51

103. The grant of July 25, 1866, does not in express words provide for the "definite location" of the road, but contemplates that the "map of the survey of said railroad," for which provision is made, shall perform that service. 29-237

104. The provision in section 2, act of July 26, 1866, requiring the survey of 60 miles of the road prior to any withdrawal therefor, is not intended to require subsequent maps of definite location to be in sections of 60 miles. 15-56

105. The grant of March 3, 1871, not only contemplates a preliminary designation of the general route, but also a map of definite location, and by such map the limits of the grant are determined (Southern Pacific). 11-582

106. The map of definite location of the Central Pacific Co. was received and approved by the Secretary October 20, 1868, upon which date its right attached, and not, as heretofore held, on July 18, 1868, the date of the adoption and certification of the map by the officers of the company. 2-488

107. The line of the Dubuque & Pacific (now Iowa Falls & Sioux City) Co. was definitely fixed October 13, 1856, the date of acceptance by the Secretary of the map of definite location, and not at date of survey in the field, as heretofore held. 2-483

108. The line of the St. Vincent extension of the St. Paul & Pacific (now St. Paul, Minneapolis & Manitoba) Co. became definitely fixed on December 19, 1871, when the map of definite location was accepted by the Secretary, and not at date of survey in the field, as formerly held. 2-481

109. The St. Paul, Minneapolis & Manitoba Co. is estopped from claiming under the map of definite location filed December 5, 1857, lands west of range 38 west, as that portion of said map was rejected, and the company, acquiescing in such action, filed other maps under which additional lands were secured. 13-440

110. Where the line of the road (Northern Pacific) is definitely fixed the grant relates back and takes the lands reserved by filing the map of general route so far as the line of definite location corresponds with the line of general route. 2-539

111. The President's acceptance of the Union Pacific road as constructed on its line of definite location west of Fort Riley to the one hundredth meridian meets the statutory requirement that such route shall be subject to the approval of the President, as the map of said route was accepted by the Secretary of the Interior and the road constructed on the faith of said acceptance. 11-108

112. Where the act required the governor of the State (Iowa) to file a map of definite location, held that a map certified and filed by the president and chief engineer of the company (McGregor & Missouri River) was sufficient. 2-567

113. The act did not require the filing of a map of definite location; the road being definitely located on the ground from Waldo to Tampa Bay, such a map was filed in 1860, certified by the officers of the company, but, lacking the governor's signature, was returned in 1861 for that purpose, and was lost; a duplicate map was filed in 1875, but was not approved until 1881; held that the original map was due notice of the definite location of the road (Atlantic, Gulf & West India Transit Co.), that it should have been kept on file and proof of the authority of the State otherwise obtained, and that it operated as a legislative withdrawal. 1-359; 2-561; 5-107

114. Duplicate map of definite location treated as original though filed after the time allowed for the completion of the road. 2-107

V. Withdrawal.

(a) Generally.

(b) On General Route.

(c) Revocation.

(a) Generally.

115. It is the duty of the Land Department to give timely notice by prompt withdrawal of the date and extent of the granted limits, for the protection of both company and settlers. 2-514

116. When Executive withdrawal of granted or indemnity lands is made in general terms, it only withdraws from market the "public lands" lying within the limits mentioned. 2-507

117. Executive withdrawal not effective until notice thereof is received at the local office. 5-651; 14-591

118. The power of the department to withdraw the granted lands without any direction expressed in the act is well settled; its purpose is to prevent defeat of the grant by private appropriation; and authority to withdraw the indemnity lands must follow. 2-514

119. The department has power to make indemnity withdrawals, though no express authority therefor is conferred by the act. 5-655; 6-18

120. Contemplated by section 6, act of July 27, 1866, relates only to lands within

primary limits, and the validity of any further withdrawal is dependent upon Executive action. 14-610

121. An Executive withdrawal for indemnity purposes is in violation of the terms imposed in the grant of July 27, 1866, and is without effect except as notice of the limits within which the company would be entitled to select indemnity. 23-500

122. If there is no statutory denial of authority to withdraw lands in aid of a congressional grant, the exercise of such authority by the Executive reserves the land so withdrawn, though the withdrawal may not have been contemplated by the grant. 6-522

123. An executive withdrawal of lands from private entry is sufficient to defeat a settlement for the purpose of preemption while the order is in force notwithstanding the law under which it was made did not contemplate such withdrawal. 2-553

124. An executive withdrawal should be given effect only to the extent intended by the department. 8-23

125. If the company (Northern Pacific) neglects to make its selection and uses the prior or subsequent withdrawals for the purpose of defeating the operation of the settlement laws, it will be the duty of the department to revoke the withdrawals. 2-516

126. Withdrawals for indemnity purposes should not be maintained beyond a period sufficient for the assertion of rights that may be properly claimed thereunder. 6-77

127. Section 6, act of July 2, 1864, authorizes withdrawal for the benefit of the Northern Pacific. (See 7-100.) 1-382

128. Withdrawal of indemnity lands (for Northern Pacific) is made in the sound discretion of the department, so as to subserve the purposes of the grant. 2-508

129. On May 17, 1883, the Secretary declined to withdraw from settlement any portion of the odd sections lying within the second indemnity limits in the Territories, on the ground that withdrawal is not at present necessary for the company's protection. 2-511

130. The extension of the homestead and preemption laws by section 6 of the

grant to the Northern Pacific "to all other lands on the line of said road when surveyed, excepting those hereby granted." prohibited an Executive withdrawal of any "lands on the line of said road." 7-100; 19-87; 20-138, 288

131. As there was no authority for the withdrawal based on the map of amended route, and the sixth section of the grant (Northern Pacific) prohibited an indemnity withdrawal, land within such withdrawals was not excluded from entry. 7-244

132. An indemnity withdrawal for the benefit of the Northern Pacific grant is in violation of the terms of said grant, and is ineffective as against an authorized withdrawal, covering the same lands, on behalf of another grant. 19-275; 25-67

133. The establishment of indemnity limits on the definite location of the Northern Pacific, and action taken thereon, did not amount to a finding by the department that all the lands in said limits would be required to satisfy the grant to said company. 24-195

134. A withdrawal of land for indemnity purposes in violation of the grant for the benefit of which the withdrawal is made confers no right upon the grantee, and is no bar to the acquisition of settlement rights. 21-487

135. Where the tract was covered by an entry (homestead) at date of withdrawal (1870) on general route (Northern Pacific), and was afterwards (1872) relinquished and the entry canceled, it fell into the subsequent withdrawal (1880) for indemnity purposes on definite location. 2-529

136. The provisions of the grant to the California & Oregon Railroad Co. forbid the withdrawal of land for indemnity purposes, and a withdrawal for such purpose confers no right upon the company. 20-123

137. A withdrawal for indemnity purposes under the grant to the Oregon & California Co. is in violation of the statute making the grant, and no bar to the subsequent withdrawal for the benefit of the wagon-road grant made by the act of July 5, 1866, and during existence of the latter withdrawal the lands embraced therein

are not subject to selection under the railroad grant. 26-546

138. An unauthorized indemnity withdrawal is no bar to a homestead application, and such application will defeat a subsequent selection. 8-282

139. An application to purchase from the company land in an unauthorized, does not defeat the right of such applicant to enter the land under the homestead law. 21-402

140. The act of July 28, 1866 (Atlantic & Pacific), is both a contract and a grant, but is not a grant of quantity and directs no withdrawal for indemnity purposes; hence there is no violation of the contract, though the company may not get the full amount of sections in the primary limits or make up the deficiency in the secondary. 6-84

141. The provision in the grant of July 25, 1866, that "the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad so far as located and within the limits before specified," renders unauthorized any withdrawal beyond the granted limits. 7-240; 28-222, 363

142. The directions in section 2 of the grant of May 4, 1870, for a withdrawal on survey and location of the road, are applicable only to lands within the primary limits of the grant. 28-231

143. Lands within the indemnity withdrawal for the Atlantic & Pacific were excepted from the grant to the Southern Pacific. 5-691

144. The withdrawal covering lands in the granted limits of the Southern Pacific and indemnity limits of the Atlantic & Pacific continued in force. 6-816

145. As the line of road (Atlantic & Pacific) terminates at the Pacific coast, there was no authority for a withdrawal of lands along the coast. 4-458

146. By definite location of road and indemnity withdrawal under the additional grant of 1865 (St. Paul, Minneapolis & Milwaukee Railway Co.), the lands covered thereby were excluded from entry and settlement. 5-565

147. The statutory, of indemnity lands on behalf of the main line of the St. Paul, Minneapolis & Manitoba road, as provided

in the act of 1865, is a bar to the subsequent selection of said lands for the benefit of the St. Vincent extension of said road under the new grant therefor made by the act of March 3, 1871. (See 25-86.)

20-249

148. For the benefit of the St. Vincent extension could not take effect on lands covered by the prior withdrawal for the main line, hence a homestead entry of land so withdrawn is properly allowed so far as said branch line is concerned, but improperly allowed as to the main line, and would have to be canceled, had the company selected the tract for the benefit thereof, prior to the revocation of said withdrawal; but no such selection having been made, and the lands having been restored to the public domain, the entry may stand.

20 249

149. Prior to filing of the maps showing definite location of the modified line of road, under the act of June 2, 1864, there was no authority for withdrawal of the even sections within the 6-mile limits of the original grant, and such withdrawal was not operative upon lands included within homestead entries.

150. The executive withdrawal (Atlantic, Gulf & West India Transit Co.) in anticipation of the probable limits of the grant (before definite location) was entirely valid; such withdrawal reserved the lands from entry and sale and could only be vacated by the authority that made it; a new withdrawal made after approval of the map of definite location is not inconsistent with the idea that the former withdrawal (which had been overlooked and ignored) was still extant.

2-568

151. The statutory withdrawal provided for in the act of July 28, 1866, is limited to lands within the primary limits by the words "all lands mentioned in this act and hereby granted."

6-535

152. Under section 12, act of March 3, 1871, it was not competent for the department to withdraw from the operation of the settlement laws the indemnity lands of the New Orleans & Pacific grant, and such withdrawal is no bar to the allowance of an entry.

7-487

153. The act of June 22, 1876, repealing the statute prohibiting the disposal of public lands in Florida, except under the

homestead law, did not relieve lands from the effect of a subsisting withdrawal; nor did the "offering" under the proclamation of July 13, 1878, affect their status, for "lands reserved for railroad purposes" were expressly excepted from such offering.

7-56

154. After withdrawal (indemnity) the Land Department retained jurisdiction of tracts covered by entries and preemptions at the time the withdrawal was made.

2 506

155. Homestead entry of record excepts the land covered thereby from the effect of withdrawal.

1-352; 8-588

156. For indemnity purposes does not take effect upon lands embraced within a subsisting preemption filing or homestead entry.

14-79; 17-592

157. Does not take effect upon land embraced within a private cash entry.

14 591

158. Land within the indemnity limits of the road (Hastings and Dakota), which was covered by entry (homestead) subsisting at date of the withdrawal was excepted from the withdrawal.

2-501

159. Where a subsisting entry (homestead) excepted a tract from the withdrawal (Hastings and Dakota), on its cancellation (for failure to make final proof) the land became public and subject to entry or selection by the first legal applicant.

2-505

160. Land covered by entry at date of indemnity withdrawal is excepted therefrom and after cancellation of the entry is subject to entry or selection by the first legal applicant.

4-232, 266, 405

161. Where an entry (homestead) existed at date of the withdrawal (indemnity), on cancellation thereafter the tract does not fall within the withdrawal.

2-507

162. Entry was made in 1878 embracing land in sections 14 and 23, and held for cancellation in May, 1879, with right of amendment so as to locate the entire tract in either section, but no actual cancellation was made or appeal taken or amendment offered; withdrawal for the road was made July, 1879, embracing section 23, and in 1880 the entryman made a second entry (including one-half of the land covered by the first entry) of land

within section 23; held that said second entry, being an amendment of the first entry, was valid. 2-852

163. The map of September 13, 1867, filed under the grant July 25, 1866, was for the purpose of showing a trial or preliminary line upon which an anticipatory executive withdrawal could be made, so as to hold the land in reservation until after survey and final location of the road; and the order of withdrawal based on such map of preliminary route was executive in character, not taking effect, according to its terms, until received at the local office (Southern Pacific). 29-237

164. Entries made prior to receipt at the local office of the executive withdrawal on preliminary line except the tracts from the grant (Northern Pacific). 2-554

165. An entry (homestead) on the tract at date of withdrawal (for Northern Pacific), though the land was afterwards abandoned, excluded it from the withdrawal; on cancellation of the entry the land was subject to appropriation by the first legal applicant. 2-506

166. A *prima facie* valid preemption filing existing at date of indemnity withdrawal excepts the land covered thereby from operation of the withdrawal. 3-305; 5-568; 7-405; 13-97; 14-364, 664; 17-288, 592

167. Valid subsisting preemption claim excepts land from withdrawal, and upon its cancellation the land reverts to the United States. 3-227

168. For indemnity purposes of "vacant lands" does not take effect upon land embraced within an unexpired filing, and the fact that under present rulings said filing would not be permitted does not operate in aid of the grant. 13-167

169. The act of May 9, 1872, extended the life of preemption filings for the period of one year in certain States, and land embraced in a filing thus kept alive is excepted from the operation of an indemnity withdrawal. 17-537

170. Does not take effect upon land covered by the settlement and filing of a pre-emptor temporarily absent in the military service of the United States. 9-489

171. Failure of pre-emptor who settled prior to indemnity withdrawal to make

final proof within the required period does not inure to the benefit of the grant. 1-400

172. Land occupied at withdrawal by a qualified pre-emptor who filed no claim is excepted from the grant. 3-253

173. An expired filing, in the absence of a settlement right claimed thereunder, does not except the land covered thereby from the operation of a withdrawal. 8-570

174. A settlement right existing at the date of indemnity withdrawal excepts the land covered thereby from the effect of such withdrawal. 2-512; 3-285; 6-756; 8-21; 11-437

175. A corroborated allegation that a tract is expected from an indemnity withdrawal, by reason of a conflicting settlement right, may be accepted as conclusive as against the company without a hearing, in the absence of any showing to the contrary by the company. 17-507, 584

176. The ruling heretofore made (17 L. D., 507) that a corroborated affidavit of settlement antedating an indemnity withdrawal might be accepted as against the withdrawal, in the absence of a showing by the company, was made pending review of the case of said company against Guilford Miller, wherein it was held that such a withdrawal was in violation of law, and, as such holding has since been reaffirmed, a showing of settlement prior to such a withdrawal is not now requisite. 21-402

177. Settlement made during a temporary withdrawal, but continued until the revocation of such withdrawal, and existing at the time of the permanent withdrawal, excepts the land therefrom. 6-611

178. A claim based upon occupancy and cultivation existing at the date of indemnity withdrawal under the act of July 25, 1866, excepts the land from the withdrawal. 10-499

179. For indemnity purposes made November 2, 1866, and December 16, 1871, for the St. Paul & Duluth and Northern Pacific companies, respectively, did not take effect upon lands within the former Mille Lac Reservation, upon which the Indians had a right of occupancy that was not ex-

tinguished, until provision was made therefor by the act of January 14, 1889.

13-230

180. Takes effect upon unsurveyed as well as surveyed land. 11-186

181. Where settlement (preemption) was made on unsurveyed land after withdrawal, and on survey was found to be an odd section, the entry allowed must be canceled. 2-557; 3-285

182. A filing based on settlement prior to survey, made when it was held that an indemnity withdrawal did not take effect upon unsurveyed land, is good as against the withdrawal. 8-21

183. The abandonment of a settlement claim after withdrawal does not render the land subject thereto. 8-542

184. Executive withdrawal for indemnity purposes does not take effect upon land covered by a voidable school selection. 10-31

185. Land within indemnity limits but not withdrawn or selected is subject to appropriation under the settlement laws. 6-535

186. No rights, either legal or equitable, are acquired by settlement on lands withdrawn by Executive order. 13-214; 14-369; 19-275

187. For indemnity purposes, while existing, excludes the land from any other appropriation. 12-27, 228, 261

188. For railroad purposes excludes the acquisition of right by settlement or application. 15-91

189. Entry within an existing withdrawal is invalid as against the grant. 8-570; 23-161

190. A settlement within an indemnity withdrawal is unavailing as against the company's right to selection. 8-355

191. Entry allowed under an existing practice for land within an indemnity withdrawal is not illegal, though subject to the rights of the company. 8-243

192. An order of, is effective though the lands may not be disposed of as contemplated, but restored to the public domain. 13-665

193. An order withdrawing lands from "preemption or homestead entry or sale" excludes appropriation under the desert-land act though such entries are not

named in the order or in the excepting clause of the grant (Texas Pacific).

13-665

194. Of indemnity lands under the act of July 4, 1866, reserves said lands from any disposal except for the purposes of the grant, and settlement on lands so withdrawn is subject to the company's right of selection (Hastings & Dakota). 12-228

195. Plea that a withdrawal can not take effect before the company accepts the conditions imposed by the State, if effective for any purpose, can only be set up by one who has been induced by such condition of affairs to go upon land otherwise subject to the withdrawal. 11-186

196. Lands withdrawn by Executive order in aid of a grant can not be diverted therefrom by settlement claims initiated after such withdrawal. 10-85

197. Where preemption settlement was made subsequently to withdrawal the claim may remain, subject to the right of selection by the company (California & Oregon). 2-512

198. The practice of allowing preemption claims or homestead entries on lands withdrawn for railroads, subject to final adjustment of the grant, is forbidden (circular). 2-517, 558, 560

199. Directions given for indemnity, on the line of the Gulf & Ship Island definite location south of Hattiesburgh. 12-269

200. Directed, in accordance with Supreme Court decision in *St. Paul, Minneapolis & Manitoba Company v. Phelps*, of the lands granted in aid of the main and branch line of said company now lying in the Dakotas. 12-373, 375

(b) General Route.

201. The withdrawal on general route contemplated by section 6, act of July 2, 1864, extends only to lands within the primary limits of the grant. 21-187

202. The line of the Northern Pacific between Wallula, Wash., and Portland, Oreg., as shown by the map filed August 13, 1870, followed the north bank of the Columbia River within the Territory of Washington, and the width of the withdrawal thereon was governed by the provisions in the grant relative to the extent

thereof where the line of road passed through a Territory; and the fact that the said river was not correctly located on said map, would not affect the extent of said withdrawal. 25-309

203. When the map of general route (Northern Pacific) was filed the statute withdrew from sale or preemption the odd sections within the designated 40-mile limits. 2-555;

3-537; 5-295; 6-11, 21; 9-155; 10-662

204. On general route reserves the land until definite location, and the status of such land meanwhile not affected by the fact that it subsequently falls within the limits of an order purporting to withdraw it for indemnity purposes. 11-92

205. Under a grant that directs a withdrawal on the filing of a map of general route, no rights attach to specific tracts on the filing of said map; and where the order for withdrawal is by its terms not effective until received at the local office, and a homestead entry is allowed prior to such time, though after the filing of said map, and remains of record at date of definite location, it excepts the land covered thereby from the operation of the grant, and this is true even though the entry is not enforceable. 28-32

206. The filing of a map of general route and withdrawal of lands thereunder do not bar initiation of settlement or other claims to lands brought within the limits of the grant by the definite location of the road; and it is only upon definite location that the initiation of such claims or rights is terminated. 33-89

207. Under the terms of the grant to the Central Pacific the withdrawal made upon the map of general route precludes the subsequent acquisition of settlement rights adverse to the company; and a settlement so made, even though it existed at definite location, would not except the land settled upon from operation of the grant. 19-100

208. Lands withdrawn on general route of Northern Pacific are not subject to settlement or purchase under the coal-land law. 14-484

209. That followed on filing map of general route under the grant of July 27, 1866, excluded the lands covered thereby from preemption filing and settlement. 14-158

210. Where several maps were filed and withdrawals under them made, only that map finally fixing the general route created a legislative withdrawal; the former withdrawals were Executive and took effect on receipt of notice thereof at the local office. 2-554

211. The statutory withdrawal for the Northern Pacific took effect in Washington Territory when the map of July 30, 1870, was filed and accepted. 7-100

212. Under the grant of July 2, 1864, a statutory withdrawal followed the filing of a map of general route. Said withdrawal, once exercised, could not be repeated, but remained in effect until the definite location of the road. 2-554; 7-100

213. The filing and acceptance of an amended map of general route was not authorized by the granting act (Northern Pacific), and an Executive withdrawal made in accordance with said map was without sanction of law. 7-100; 10-288, 440

214. The map of general route approved August 13, 1870, designated the general route of the Northern Pacific through the Territory of Washington, and authorized the only withdrawal therefor. The later withdrawal on amended map of February 21, 1872, was unauthorized by law and inoperative as against the subsequent acquisition of settlement rights. 17-8, 507

215. Section 6 of the act of July 2, 1864, provides for but one withdrawal on general route, which becomes effective at once on approval of the map, and precludes the subsequent exercise of Executive authority to make a further withdrawal for such purpose on a second or amended map of general route. 17-8; 22-636

216. Upon accepting a certain map of amended route (Northern Pacific) it was ordered that the rights of settlers within the new withdrawal must be protected if settlement or entry were made prior to receipt of notice at the local office. 2-552, 556

217. On general route for the main line, while standing, excludes the land covered thereby from selection as indemnity for lands lost on the main or branch line (Northern Pacific). 14-525

218. On general route for the branch line of the Northern Pacific road did not

operate to reserve lands for the benefit of the main line. (See 28-126.)

8-365; 23-6

219. The withdrawal on general route of Northern Pacific did not debar the Executive from the exercise of its ordinary authority in establishing military reservations.

6-657; 27-505

220. The legislative withdrawal following the designation of the general route of the Union Pacific, was only from "preemption, private entry, and sale," and did not bar the Executive from the exercise of its ordinary authority in the matter of establishing military reservations.

29-261

221. For the benefit of the Northern Pacific is "from sale, entry, and preemption" only, and does not debar the Executive from the establishment of an Indian reservation; and lands within said limits, so reserved at date of definite location, are excepted from the operation of the grant.

20-332; 26-422

222. A homestead entry of record excepts the land covered thereby from, on general route, and the subsequent cancellation of the entry leaves the land open to entry till definite location.

2-536;

3-490; 10-307,427

223. On general route does not take effect on land covered by a homestead entry even though the statutory life of such entry may have expired.

11-568

224. An entry made before receipt of notice of withdrawal on general route (Northern Pacific) excepts the land covered thereby from such withdrawal.

6-21

225. Where entry was made on the same day the map of general route (Northern Pacific) was filed, the tract was excepted from the withdrawal; on subsequent relinquishment, it became public and was embraced in the withdrawal on amended line of general route.

2-569

226. Preemption claim existing at date of withdrawal on general route (Texas Pacific) excepts the land therefrom.

1-388

227. Withdrawal on general route (Northern Pacific) did not take effect on land covered by a preemption claim.

5-529

228. *Prima facie* valid filing of record excepts the land from withdrawal on general route (Sioux City & Pacific).

8-292

229. On general route does not take effect on land covered by an unexpired preemption filing.

10-288;

11-443, 471; 16-343; 19-184

230. An unexpired filing by one *in esse* excepts the land covered thereby from subsequent withdrawal on general route, and the company will not be heard to allege that the preemptor has not complied with the law.

10-662; 13-617

231. Preemption filing made the same day the map of general route was filed, and of record when the order of withdrawal was made thereon, excepts the land included therein from the withdrawal.

8-542

232. Where the tract was excepted by a claim (filing) from the withdrawal on general route (Northern Pacific), but was afterwards actually abandoned on erroneous information given by the local officers, it thereupon became public and passed to the company on definite location.

2-474, 570

233. Lands north of the western terminus of the main line of the Northern Pacific, as fixed at Tacoma, were released from the effect of the prior withdrawal thereof on general route, by the establishment of said terminal, and the right to equitable action on a private cash entry made of such lands after such withdrawal and prior to said release is not defeated by the subsequent withdrawal for the branch line of said road east of said terminal.

21-252

234. By establishment of the western terminus of the main line of the Northern Pacific at Tacoma lands north of such terminal line are released from the effect of the prior withdrawal on general route.

22-636

235. A cash entry of land within the withdrawal on general route, made after the map of such route was filed but before notice of withdrawal, is illegal and does not except the land covered thereby.

9-155

236. The amended map of the general route of its branch line, filed by the Northern Pacific in 1876, was an abandonment

of its previous general route of said line, as shown by the map of 1873, and a relinquishment of all rights under the withdrawal in accordance therewith. 22-637

237. For the benefit of the Northern Pacific, on the map of general route filed August 15, 1873, can not be pleaded by the company as against the operation of a preemption claim filed after the abandonment of such route by the company, and prior to definite location. 24-516

238. Where settlement was made after receipt of notice of withdrawal on general route (Northern Pacific) on unsurveyed land which was found on survey to be on an odd section, and a subsequent withdrawal on amended map embraced the land, the entry (homestead) is disallowed. (See 2-557.) 2-551

239. The withdrawals of 1873 and 1879 on general route of the Northern Pacific (branch line) and amendment thereof confer no right as against a settlement made after the first and before the second. (See 2-551.) 1-397

240. A claim based on settlement, residence, and improvement existing at the date of withdrawal on general route excepts the land included therein from such withdrawal (Northern Pacific). (See 18-224.) 7-131, 238; 8-362; 10-264

241. A settlement right, though unprotected by a filing, existing at withdrawal on general route excepts the land covered thereby from the operation of such withdrawal. 7-131

242. On general route does not take effect upon land covered by a valid settlement right, and the land is thereafter open to settlement and entry by the first legal applicant. 11-482

243. Where after date of grant (Texas Pacific) withdrawal (on preliminary line) was made covering land for which had been filed an application to purchase (section 7, act July 23, 1866), and the land embraced in the application was afterwards suspended from sale pending its consideration, the withdrawal was not affected by said suspension. 2-549

244. Withdrawal on general route (Northern Pacific) took effect on lands (unsurveyed) which were within the limits of an Indian reservation (in Montana) upon subsequent extinguishment by Ex-

ecutive order of the right of Indian occupancy. 2-519

245. A map of general route is not a requirement attached to the grant made for the benefit of the Sioux City & Pacific line by section 17, act of July 2, 1864, and the filing of such map works no withdrawal. 14-196

246. The act of July 27, 1866, making a grant in aid of the main line of the Southern Pacific, provided for a map of general route and withdrawal thereon, and also for a map of definite location, which latter map fixes the limits of the grant, and upon the filing thereof rights under the grant attach. 30-247

247. The filing of the map of general route and withdrawal thereon do not prevent appropriation of the land by the Government, for Indian or other needful purposes, at any time prior to filing of the map showing the line of definite location of the road opposite thereto. 30-247

(c) Revocation.

248. Indemnity withdrawal confers no vested right and is dependent upon the will of the Secretary, who may revoke the order and restore the lands to entry. 2-516; 5-658; 6-77

249. The department may prescribe rules under which failure of the company to properly assert its right as against a settler after indemnity withdrawal will operate as a revocation thereof as to the tract involved. (See 20-259.) 5-658

250. Question as to revocation of certain Executive withdrawals submitted to the President. 6-77

251. Rule of May 23, 1887, entered on certain companies to show cause why the Executive withdrawals made for their benefit should not be vacated. 6-80, 82

252. The statutory withdrawal on location of the Pacific grants extends only to lands within the granted limits, and all withdrawals of indemnity lands therefor rest on Executive authority alone, and may be revoked by the Secretary whenever, in his judgment, the necessities of the case require. 18-314

253. A withdrawal resting solely on the general authority of the Secretary may be

vacated without violating any law or contract. 6-84; 12-541; 28-231

254. If that made for the St. Paul & Sioux City Co. was under legislative direction contained in section 7, act of March 3, 1865, no objection can be made to revocation of said withdrawal after repeal of said section. 12-541

255. Section 4, act of September 29, 1890, is intended to restore lands formerly withdrawn for indemnity purposes, and this restoration is not limited by the adjustment act of March 3, 1887. 12-541

256. Executive withdrawal for the benefit of the Atlantic & Pacific revoked on the ground that such action is required by a sound public policy with respect to settlement rights and is not in violation of either law or equity. 6-84

257. Withdrawals revoked under rule of May 23, 1887. 6-92, 419, 456

258. Statement showing the names of roads included in the orders revoking certain indemnity withdrawals under the rule of May 23, 1887, the dates of said orders, and the location of the lands affected thereby. 6-131

259. Certain grants not affected by the order made under the rule of May 23, 1887, revoking indemnity withdrawals. 6-328

260. The order of August 15, 1887, revoking the indemnity withdrawal made for the Wisconsin Central to stand pending an early adjustment of the grant. 6-190

261. Directions given for a rule on certain companies to show cause why the indemnity withdrawals made for their benefit should not be revoked. 11-625

262. Directions given for the restoration to settlement and entry of lands heretofore withdrawn for certain companies. 12-541

263. The departmental order of May 22, 1891 (12 L. D., 541), restoring to settlement and entry. "in accordance with the rules established in similar cases," certain lands withdrawn for railroad indemnity purposes, referred to the "rules" contained in the special circular of September 6, 1887 (6 L. D., 131), governing the restoration of railroad indemnity lands. 29-218

264. Withdrawals for the Memphis & Little Rock Co. and the Madison & Portage Co. revoked. 8-427

265. The order of August 17, 1887, revoking the indemnity withdrawals made in aid of the grants of June 3, 1856, and May 5, 1864, suspended. 10-85

266. For indemnity purposes for the benefit of the Chicago, St. Paul, Minneapolis & Omaha Co. revoked. 10-147

267. Order of February 12 (11), 1890, revoking withdrawal for the Chicago, Minneapolis & Omaha Co., modified. 11-607

268. The order of December 7, 1887, restoring odd-numbered sections south of the terminus of the Denver Pacific and west of the terminus of the Kansas Pacific at Denver withdrawn but not certified or patented, vacated. Patents not to issue for lands within said area. 6-581

269. The revocation of an indemnity withdrawal takes effect as soon as issued, and a settlement on land within such withdrawal existing at the date of revocation will be protected as against a subsequent selection. 8-355; 13-145

270. Revocation of withdrawal opens land to appropriation under pending applications. 6-309

271. Revocation of withdrawal opens land to settlement and entry from the date when order becomes effective. 6-378, 382; 18-314

272. Revocation of, does not restore to the public domain land included within pending selections. 9-74; 10-317; 12-29; 17-70

273. Procedure to be observed on the part of the company and settlers in case of conflicting claims for lands within the limits of a revoked indemnity withdrawal. 8-237; 9-251

274. Under the order revoking its indemnity withdrawal the "right of the company to make selection" should be determined by the Land Office in cases of unapproved selections covered by applications to file or enter. 8-237

275. The company will not be heard to object to a settlement claim within its indemnity limits after revocation of the withdrawal and in the absence of a selection. 8-355

276. A *prima facie* valid entry for land withdrawn as indemnity is relieved from conflict with the grant on revocation of the withdrawal if the land has not been selected. 8-243

277. Revocation of withdrawal effected by appropriation of the land and its subsequent restoration to the public domain. 5-332

278. The statutory withdrawal on general route is not defeated nor impaired by an erroneous order of restoration issued by the General Land Office. (Northern Pacific.) 20-498; 26-279

VI. Indemnity.

See VII HEREOF.

279. Indemnity lands included within the general descriptive phrase "granted lands." 9-468

280. A railroad grant does not take effect upon particular indemnity lands prior to selection. 1-332, 340, 389, 627; 2-506, 510; 4-256; 6-431, 615; 8-23; 10-504

281. If there is no ascertained or established deficiency in a railroad grant, and the indemnity lands are not withdrawn, the company has no rights within the indemnity limits prior to selection, that will bar the initiation of a settlement claim. 28-222

282. The rule that the right of a railroad company took effect at the same time upon both indemnity and granted lands obtained for many years and until April 7, 1879. 2-528

283. Right to indemnity must be recognized though the road is not built in the required time. 5-93, 512

284. The provision in the grant of July 4, 1866 (Hastings and Dakota), for a reversion of the lands granted if the road is not completed within the period specified does not, in the absence of action to enforce forfeiture, defeat the right of selection even though the road is not completed in said period. 12-228

285. The judicial dissolution of a company does not defeat the right of the stockholders to select and receive, through a trustee appointed for such purpose, indemnity for lost lands (Hastings and Dakota). 18-511; 21-312

286. The joint resolution of May 31, 1870, created a second indemnity belt (Northern Pacific). 8-13

287. The joint resolution of May 31, 1870, made a grant of second indemnity lands along that portion of the line of the Northern Pacific between Portland, Oreg., and Puget Sound. 37-272

288. Losses within the primary limits of the grant made by the joint resolution of May 31, 1870, occurring after the date of the grant and prior to the definite location of the line of road, furnish a proper basis for the selection of lands from the second indemnity belt opposite thereto. 37-273

289. Lands lost to the grant made to the Northern Pacific by the act of July 2, 1864, by reason of being mineral in character, will not support a selection of other lands in lieu thereof within the second indemnity belt provided by the joint resolution of May 31, 1870. 37-593

290. Lands classified as coal may be disposed of only under the coal-land laws, and are not subject to indemnity selection by the Northern Pacific under the act of July 2, 1864, in lieu of mineral lands lost to the company's grant. 39-314

291. *Quare*: Are unclassified coal lands "agricultural lands" within the meaning of the act of July 2, 1864, and subject to indemnity selection on account of mineral losses? 39-314

292. The object of the law is to give the company (Northern Pacific) within the entire indemnity belt just what has been lost in place by other appropriation within the granted limits to the amount of lands intended to be granted, and no more. 2-514

293. The Northern Pacific Co. is entitled to indemnity for lands excepted from its grant on account of a prior grant to another company. 22-606

294. Lands within the overlap of the grant made by the act of July 2, 1864, to the Northern Pacific, and the grant made to the same company by the joint resolution of May 31, 1870, are subject to indemnity selection by said company under the latter grant. 31-151

295. The measure of the grant made by the joint resolution of May 31, 1870, is

not the *whole* of the unsatisfied loss within the limits of the grant of July 2, 1864, but sufficient lands "to make up such deficiency . . . to the amount of lands that have been granted, sold, reserved, occupied by homestead settlers, preempted or otherwise disposed of *subsequent* to the passage of the act of July 2, 1864." 36-328

296. Land not within the withdrawal on general route, but within the indemnity limits on definite location, was free from the operation of the grant until duly selected (Northern Pacific). 7-100;

19-87; 20-138, 288; 21-487

297. Indemnity can not be allowed for lands sold by the Government after definite location. 6-195

298. Indemnity can not be allowed for lands in place erroneously certified to another company. 6-195

299. On relinquishment, may be allowed for lands improperly patented as within the granted limits if in fact such lands were excepted from the grant. 9-483

300. In case of the erroneous patenting, as indemnity, of land for which no previous application had been made, the company will be afforded opportunity to specify a basis therefor and the patent allowed to stand. 31-272

301. Claim for, based upon a loss of lands taken under the swamp grant can only be allowed so far as the claim of the State has been recognized. 9-483

302. Through discrepancy in the indemnity limit diagrams, intervening rights are held to bar the claim of the company. 3-428

303. Where the grant (to Florida) designated neither even nor odd sections the company (Atlantic, Gulf & West India Transit) elected to take the odd sections. 2-561

304. The act of July 13, 1866, provided for deficiency in case the road ran nearer than 10 miles to the State line and did not apply to lands east of the road (St. Paul & Duluth). 4-407

305. Under the act of July 13, 1866, "deficiency" and "lieu" lands occupy the same status. 4-407

306. If the indemnity provided for one of the lines or branches (St. Paul, Minneapolis & Manitoba Railway) prove insufficient therefor, the deficiency may be sup-

plied from the indemnity limits of the other lines or branches. (See 13-354.)

8-255

307. The grants to the Wills Valley road and Northeast & Southwestern by act of June 3, 1856, were distinct and separate, and there is no authority for certification of lands within the limits of one road to satisfy losses on account of the other (Alabama). 14-129

308. The grant of February 9, 1853, as revived and extended by the act of 1866, was intended equally for every part of the road and its branches, and deficiencies on one branch may be made up by selections from lands within the indemnity limits of the other (Little Rock & Memphis Co.). 11-168

309. In adjustment of the grant made by the acts of 1856 and 1864 (Wisconsin) the right to indemnity must be recognized as extending to losses ascertained at definite location. 6-195, 209

310. Principles announced in Chicago, St. Paul, Minneapolis & Omaha Co. (6 L. D., 195) followed in adjustment of the grant to the Missouri, Kansas & Texas Co. 11-130

311. The acts of 1856 and 1864 provide indemnity for losses before definite location caused by the swamp and internal improvement grants previously made to the State (Wisconsin). 6-195

312. The indemnity accorded the Farm Mortgage Co. for losses between Portage and Tomah should not be deducted from the indemnity claimed by the Omaha Co. (Wisconsin). 6-19

313. The Chicago, St. Paul, Minneapolis & Omaha Co. is entitled to, for losses sustained through overlapping of the 6 and 10 mile granted limits at the junction of the main and branch lines of the road. 9-483

314. Under the act of March 3, 1873, the Chicago, St. Paul, Minneapolis & Omaha Co. can make indemnity selections for lands settled upon within the indemnity limits between Tomah and Hudson, and which might have been selected if the order of withdrawal had been made on definite location. 9-465

315. The right of the Gulf & Ship Island Co. under the last clause of section 7, act of September 29, 1890, to select is re-

stricted to even sections within the original indemnity limits "nearest to and opposite" that portion of the road that may be constructed at date of selection.

12-269

316. The right to select indemnity provided for in section 7, act of September 29, 1890, is restricted to even-numbered sections in the indemnity limits opposite to and coterminous with the portion of the road constructed and in operation at the date the act of forfeiture took effect (Gulf & Ship Island).

16-237

317. The completion of the Gulf & Ship Island road entitles the company to select indemnity, for lands relinquished, anywhere within the indemnity limits of the grant.

23-566

318. The proviso to section 1, act of July 4, 1866, excepting from the grant made by said act "all lands heretofore reserved . . . for the purpose of aiding in any object of internal improvement," etc., was not intended to limit or restrict the indemnity grant specifically provided for in said act.

29-264

319. The grant of May 12, 1864, to the State of Iowa was a grant in place and of a moiety for each road within common granted limits; hence no indemnity can be allowed either road for lands lost by reason of the moiety granted the other.

6-47, 54

320. Lands within the indemnity limits of the old line (Cedar Rapids & Missouri Railroad) east of Cedar Rapids may be selected in lieu of lands west of said city if required to make up the six sections per mile to which the company is entitled.

9-370

321. Grant to the Grand Rapids & Indiana Railroad provides for a continuous line, with the right to take indemnity anywhere along said line.

10-676

322. Lands subject to the grant in aid of the Marquette Co. at date of withdrawal and certification thereunder, though within the indemnity limits of the Ontonagon Co., were not subject to selection therefor.

6-649

323. For the moiety lost in common granted limits the Ontonagon Co. is not entitled to indemnity.

13-464

324. Lands within the overlapping limits of the grants for the Northern Pacific

main and branch lines, embraced within the act of September 29, 1890, forfeiting the grant for the unconstructed main line, and excluded from the moiety taken on behalf of the branch line, can not be made the basis for indemnity.

26-113

325. The fee simple of lands within the limits of the grant (Northern Pacific) to which the Indian title had not been extinguished passed under said grant, subject only to the right of Indian occupation, and said lands therefore afford no basis for indemnity. (See 16 229.)

7-100

326. The odd-numbered sections in the Yakima Indian Reservation did not pass under the grant to the Northern Pacific company and afford legal bases for indemnity selections by the company.

23-543; 26-312

327. Where indemnity is sought for lands included in a reservation (Camp Verde) the true boundaries of said reservation should be established, in order to properly determine the lands for which indemnity may be allowed.

21-18

328. The Northern Pacific under its grant is entitled to select indemnity for losses caused by an unsurveyed Indian reservation.

29-187

329. It appearing that lands east of Superior City have been made the basis of indemnity selections on behalf of the Northern Pacific in North Dakota, and that the action of the department hitherto has given color to such claims, the company is allowed 60 days from notice within which to specify a new basis for any selections avoided by the decision of November 13, 1895.

21-412

330. Indemnity selections of the Northern Pacific resting on alleged losses east of Superior City, regular and legal under the existing construction of the grant at the time when made, should be protected under the changed construction of the grant with due opportunity to assign new bases, as against intervening adverse claims.

23-351; 24-444

331. The Northern Pacific should be allowed to specify new bases for selections on account of lands within the limits formerly recognized east of the terminal established at Duluth.

25-47

332. Between Thomson and Duluth the Northern Pacific company will not be en-

titled to indemnity for any lands to which the Lake Superior & Mississippi company may have been entitled under its grant.

23-428

333. The Northern Pacific company is entitled to indemnity for lands lost to its grant on account of the prior grant to the Lake Superior & Mississippi company between Thomson and Duluth.

34-105

334. On account of the consolidation of the Northern Pacific and Lake Superior lines of railroad between Thomson and Duluth, the grant to the first-named company must be charged with all lands received by the latter company, between said points, under its prior grant, and for the lands so taken by said company, whether within its primary or indemnity limits, the Northern Pacific is not entitled to indemnity.

25-68

335. As to lands lying within the granted limits of the Northern Pacific grant, and also within the additional indemnity limits of the Lake Superior & Mississippi road provided for in the act of July 13, 1866, the right of the latter company is defeated by the grant and location of the Northern Pacific made prior to selection on behalf of the Lake Superior & Mississippi road; but, if lands occupying such status are erroneously patented to the latter company, indemnity therefor can not be allowed the Northern Pacific as the lands so patented must be charged to its grant.

25-536

336. Action suspended on indemnity selections of the Northern Pacific where the losses assigned therefor are of lands between Thomson and Duluth and within the limits of the grant to aid in the construction of the St. Paul & Duluth Railroad.

27-525

337. Action will not be suspended on indemnity selections of the Northern Pacific, where the losses originally assigned were of lands east of the terminal limit established at Duluth and the company acting under departmental permission has substituted other bases, west of said terminal, that have proved to be invalid.

27-525

338. All action looking to disposition of lands in second indemnity selections made by the Northern Pacific in lieu of lands alleged to have been lost to its grant

within the limits of the withdrawal on general route of the Lake Superior & Mississippi company has been suspended to await final determination of the question (now pending before the Supreme Court) whether lands so situated furnish a sufficient basis for second indemnity selection; but where any such lands are embraced in entries allowed prior to selection, the suspension as to such lands will no longer continue. Action on such entries will proceed in due course and the selection to that extent canceled.

34-207

339. Indemnity may be properly allowed for an odd-numbered section within a Mexican grant on which patent has been issued by the United States. (See 29-135.)

21-432

340. No right attaches to any specific tracts within the indemnity limits of the grant made by the act of August 11, 1856, to the Vicksburg & Meridian Railroad Co., prior to selection in the manner prescribed by said act; and where, after withdrawal of the lands within the indemnity belt, but prior to selection by the company, graduation cash entry was permitted for a portion of the lands, and allowed to stand for many years without objection by the company, such entry will not now be canceled with a view to permitting the company to make indemnity selection of the lands embraced therein.

33-236

VII. Selection.

See VI HEREOF.

341. Until selection is made and approved the title to indemnity lands is in the Government and subject to its disposal.

2-820; 3-306;

13-230; 18-314; 27-348; 28-231

342. The Secretary of the Interior, in the administration of the several land grants to railroads, is not bound to follow the broad principles quoted in the decision of the Supreme Court in the case of *Sjoli v. Dreschel* (199 U. S., 564), but may confine what is said therein to a state of facts similar to those then before the court.

35-77

343. No title passes to lieu lands before approval of the company's list of selections; and, when so approved, the lands are to be considered as fully selected

as of the date of the listing, so as to give to the company superiority over homestead or preemption claimants settling after the listing by the company. 35-77

344. Where at the date of selection of a tract by a railroad company it is free from adverse claim and otherwise subject to selection, the claim of the company under its selection can not be defeated by attempted initiation of rights between the date of selection and approval thereof by the Secretary in the regular course of business. 37-260; 38-378

345. Prior to selection the lands within the indemnity limits of the Northern Pacific grant are open to settlement and entry. 20-138, 288; 24-40; 26-153

346. The fact that a deficit exists in the grant does not relieve the company from the necessity of selection to acquire title to indemnity lands. 14-610; 16-457; 22-493

347. The right does not attach to any specific lands within the indemnity limits until selection, notwithstanding the loss on account of which indemnity might be taken is ascertained to be largely in excess of all the land subject to indemnity selection. 36-349

348. The Supreme Court of the United States, in the case of the St. Paul & Pacific company against the Northern Pacific, did not rule that title to, can be acquired without selection. 14-591

349. An indemnity selection is not a "filing" or an "entry," as such terms are ordinarily used. (See 32-51.) 28-282

350. A selection made in accordance with existing regulations, and duly accepted or recognized by the local officers, is a "lawful filing" within the excepting clause of the proclamation of June 29, 1898, creating an addition to the Pine Mountain and Zaca Lake Forest Reserve. 32-51

351. A list of selections presented in accordance with departmental regulations and accepted and recognized by the local officers has the same segregative effect, while pending, as a homestead or other entry under the general land laws. 33-161

352. Priority in selection determines rights dependent thereon to land in common limits. 4-426

353. No absolute right to granted land exists and no right of indemnity selection can possibly rise until the line of road is definitely located. 7-100

354. The right to select indemnity accrues at definite location though the title to selected lands does not vest till approval, and this right may be sold or encumbered. 18-518

355. The status of indemnity lands at the date of selection, not definite location of the road, determines the right of the company thereto. 3-51; 22-273

356. Right acquired by selection dependent upon the status of the lands at date of selection and not at date of withdrawal. 10-504; 12-19; 13-535

357. The right of a railroad company to take a tract of land as indemnity must be determined by the status of such tract at the date of the application to select the same. (See 27-464.) 21-395; 22-493

358. A selection that is not susceptible of approval at the time made on account of a prior adverse claim may be approved where such claim is subsequently relinquished. 20-408

359. An indemnity selection admitted of record at a time when the land was embraced within a pending application for the right of entry, and allowed to stand subject to said application, is a bar to other disposition of the land, if such application is subsequently abandoned. 27-462

360. If the local officers erroneously allow an indemnity selection to go of record during the pendency of a prior adverse claim, it is within the authority of the Secretary to permit such selection to stand, and to give it his approval upon the subsequent abandonment or other elimination of the adverse claim. 27-464, 470

361. An indemnity selection permitted to go of record for a tract of unoffered land embraced within an expired, though unanceled, preemption filing is notice to all who may thereafter attempt to initiate a claim to said land, and may be approved, where it appears that the preemptor had in fact abandoned the land prior to its selection by the company. 27-543

362. An indemnity selection regularly allowed to go of record under the rulings

then in force should not be canceled without affording the company due opportunity to be heard. 27-470

363. An indemnity selection, regularly allowed, should not be canceled on the ground that a proper basis had not been assigned therefor, without affording the company due opportunity to supply another and sufficient basis. 28-298

364. While the company's right to land within the indemnity limits is determined as of its status at the date of selection, yet an adverse adjudication as to the company's right will not prevent a subsequent assertion of right on behalf of the company if the land thereafter becomes subject to selection. 27-435

365. An indemnity selection of lands embraced at such time within a reservation for a reservoir site is inoperative, and the subsequent release of said lands from such reservation will not inure to the benefit of the prior selection. 22-617

366. A selection tendered for land within a prior existing entry is properly rejected; and an appeal from such action secures no right under said selection that will attach on the subsequent relinquishment of said entry. 27-542

367. Under a judgment holding an entry subject to the right of a railroad company to make selection of the land, the subsequent allowance of such selection is in effect a cancellation of the entry; and the validity of the selection is not affected by the fact that the entry is not formally canceled at such time. 27-651

368. The allowance of entry upon an application pending at the time of the presentation of a railroad selection for the same land is in effect a rejection of the proffered selection, and cancellation of the entry does not operate to revive the application to select, although never formally rejected, to the prejudice of the rights of an adverse claimant. 37-37

369. The right of selection within indemnity limits is a preference right that may be asserted as against everyone. 5-658

370. Rights secured by indemnity selections take effect as of the date when the selections are filed in the local office and not from the date of their approval by the local officers. 18-333

371. Selections of, can not be allowed until the land included therein has been surveyed and a plat of the survey duly approved and filed in the local office. 8-307; 10-214; 15-8; 27-122

372. Selection of unsurveyed land should be canceled, not suspended to await survey. 24-40

373. The railway company having filed supplemental lists of selections after the filing of the township plat and within the time allowed by law, adjusting its selections to the lines of survey, settlement claims initiated subsequent to the filing of such lists will be rejected, and entries inadvertently allowed subsequent to that date canceled; while entries allowed and settlement claims by qualified homesteaders initiated prior to that time will be accorded priority over the company's selections, if since maintained by compliance with law. 39-583

374. Selections of indemnity should be made of surveyed lands subject thereto nearest the lands lost. 20-187

375. Selections should be made from lands nearest the granted sections in which the loss is alleged. 4-90; 8-373; 10-147

376. Selections should not be rejected on the ground that they are not "nearest to the lost lands," if in fact the nearest available surveyed lands subject to indemnity selection at that time. 17-313

377. Indemnity selections. Circular instructions August 4, 1885. 4-90

378. The validity of a selection can not be determined if the basis is not designated. 4-90; 9-370

379. The order of August 4, 1885, must be enforced, and companies required to specify a basis not only for pending selections, but for all selections heretofore approved on account of which no previous loss has been assigned. 17-406

380. The commissioner directed to call on all railroad companies having pending selections to revise their lists within six months, so that a proper basis will be shown for all lands now claimed as indemnity, the same to be arranged tract for tract. 17-406

381. Failure of a railroad company to revise a list of indemnity selections in accordance with the order in the La Bar

case relieves the lands embraced therein from the effect of prior selection. 22-482

382. Failure to rearrange losses within the time specified in the La Bar decision can not operate to the advantage of one whose settlement and application to enter were made when the lands were withdrawn and embraced within a selection made prior to said decision, and where before any steps were taken by the Government toward the disposition of the land the company had complied with the requirements of said decision. 26-429

383. A railroad company is entitled to six months from date of actual notice of the order issued under the La Bar case in which to file rearranged indemnity lists. 23-552

384. In the rearrangement of an indemnity list, under the directions in the La Bar case, it is not essential that the rearranged list be signed by the selecting agent of the company. 23-552

385. Indemnity selections, accompanied by designations of loss in bulk, made prior to the decision in the La Bar case, protect the right of the company, as against subsequent applications to enter, filed prior to said decision and the rearrangement of losses in accordance therewith. 22-202; 24-439; 26-429

386. A list of indemnity selections resting on a designation of losses in bulk will not be regarded as a bar to disposition of the lands so selected; nor will a subsequent specific designation of losses validate such list if the company is not entitled to make said selections on the losses so assigned. 22-610

387. On the rearrangement of a list, based on losses alleged in bulk, so that the lands selected and the losses specified shall correspond, tract for tract, the rights of the company date as of the presentation of the first list so far as the selections and losses are the same. 24-444

388. In the rearrangement of specifications of loss in bulk, so as to show a specific loss for each tract selected, the correction of a clerical error in the description of a tract included in the original assignment of losses, will not be regarded as the substitution of a new basis in support of the list, nor be held to invalidate

such list as against the subsequent acquisition of adverse rights. 23-324

389. On the rearrangement of a list, a change in the basis assigned for a specific selection does not amount to a new selection of such tract, or an abandonment of the original selection thereof, where the bases used were included in the original list and are lands actually lost to the grant. 29-442

390. The circular requirement of a specified basis issued August 4, 1885, was not intended to invalidate selections theretofore made, but to require a specification of the losses for which such selections were made. 12-450

391. A list in which due specifications of loss are assigned, should not be rejected on account of the company's failure to designate losses for prior selections, as required by the circular of August 4, 1885, but should be suspended awaiting compliance with said requirement; and a list so filed operates to protect the right of the company from the date of its presentation. 23-489

392. A list of selections rejected by the local office on account of the company's failure to designate losses in lieu of selections made prior to the circular of August 4, 1885, does not operate to reserve the lands included therein from homestead entry. (See 23-489.) 22-438

393. An indemnity selection made without specification of loss, and prior to the departmental requirement of such specification, is entitled to recognition, where the company subsequently, and within the time accorded, assigns a basis therefor. 29-440

394. A list of indemnity selections in which no losses are designated as bases for the selections is no bar to a subsequent adverse appropriation of the lands embraced therein; and a list of such character can not be perfected by the specification of losses after the intervention of adverse claims. 22-493

395. In case of a duplication of bases in an indemnity list, an approval of the list to the extent of the basis assigned renders the remaining tracts dependent upon said basis unsupported, and a new assignment of basis for such remaining tracts can not

be allowed so as to affect intervening adverse rights. 30-106

396. Departmental order of May 28, 1883, dispensing with designation of basis under Northern Pacific selections. 12-196

397. The order of May 28, 1883, permitting selections without designating the basis, did not extend to lands subject to settlement, but only applied to lands protected by withdrawal (Northern Pacific). 11-428; 14-378; 17-289; 22-57; 26-17

398. A selection made under the order waiving the requirement of a specified loss is legally made and excludes the acquisition of settlement rights; and an application to make preemption filing on land thus selected at date of settlement must be rejected where the loss has been designated previously thereto. 12-448

399. Made under the departmental order waiving specifications of loss are valid, and while of record a bar to the allowance of adverse claims. A list in bulk of lost lands filed thereafter in support of such selections does not invalidate the same, nor can a subsequent rearrangement of said list, tract for tract, to correspond with the selections, be regarded as an abandonment of the company's right under its original action. 22-135; 24-370, 444

400. A list of indemnity selections filed by the Northern Pacific without designating the basis, prior to the order of May 28, 1883, excepting said company from the general terms of the circular of 1879 requiring such designation, is protected by said order of 1883, in the absence of any intervening claim, and is not invalidated by the circular order of August 4, 1885. 12-448; 22-606; 24-444

401. The Northern Pacific is not entitled to invoke the protection of the order of May 28, 1883, waiving specification of loss, where it assigns an insufficient basis for a selection in the presence of a contest involving the right to enter the selected tract; nor can a subsequent assignment of a sufficient basis avail the company as against the right of the contestant in such a case. 26-589

402. The company is not entitled to plead the protection extended by the order of May 28, 1883, to indemnity selections made without designation of loss, if, after

making such selection, it assigns an insufficient basis therefor, and subsequently an adverse right intervenes. 26-114

403. A list of indemnity selections made under the order of May 28, 1883, waiving specifications of loss, subsequently amended by designation of loss in bulk, under the circular of August 4, 1885; and thereafter rearranged, in accordance with departmental decisions, tract for tract, with the losses specified, is protected as against a settlement made after the designation in bulk and prior to said rearrangement. 26-312

404. The order of May 28, 1883, waiving specification of loss in support of indemnity selections, was made at a time when the indemnity withdrawals for the benefit of the Northern Pacific were held valid, and that fact must be considered and given effect in determining the scope and purpose of said order, although such withdrawals are now held invalid. 22-309; 24-417

405. Where the company waives the privilege conferred by the order of May 28, 1883, and designates a basis that proves to be invalid, it is not entitled to plead the protection of said order. 19-233; 25-67

406. A railroad indemnity selection, valid when made, under departmental order relieving the Northern Pacific from designation of a particular loss as a basis for selection, will not be avoided upon an allegation that a loss subsequently designated, in obedience to departmental order of August 4, 1885, was not the nearest available loss. Any requirement for specification of a loss as a basis for an indemnity selection is only for departmental information and as an aid in the adjustment of the grant. 34-105

407. The right to select a particular tract not recognized if the basis is not specifically designated. 11-1, 428; 12-518; 13-97, 440

408. An indemnity selection must fail in the absence of a valid basis therefor. 23-543

409. In the preparation of lists of, each loss should be separately specified and the selection therefor designated. The difference in acreage that may exist be-

tween the loss and selection should approximate the area of the smallest legal subdivision. 15-529

410. The fact that by applying the rule of approximation a particular tract might be excluded from an indemnity selection, as in excess of the basis, will not affect the validity of such selection as to other tracts for which a sufficient basis is duly designated in a list wherein the losses fully support the selections. 26-693

411. A selection in the absence of a specified basis is no bar to the acquisition of a settlement right, and after such has intervened the company will not be permitted to designate a loss, and thus perfect the selection. 15-101; 24-453

412. The specification of a loss is a prerequisite to the legal assertion of the right to select indemnity; and an application to select, not based on a specified loss, is no bar to other disposition of the land. 17-289; 24-195; 26-17

413. The loss on which selection rests should be specified, tract for tract, not exceeding in any case an entire section. 13-349; 17-313

414. It is not necessary in case of indemnity selections under the grant of July 4, 1866, and the designation of losses in support thereof, that the lands should be described according to smallest legal subdivisions. 29-554

415. A specification of losses by sections instead of parts of sections may be accepted as sufficient where the losses are within a reservation and the status of the entire section is the same. 27-513

416. A selection of an entire section in lieu of a specified section designated as a whole, may be accepted as based on a sufficient specification of loss, where the entire section so specified is in fact lost to the grant, and no danger exists of an enlargement of the grant through the acceptance of such selection. 27-427

417. If the tracts specified as the basis for a selection are actually lost to the grant there is no objection to the inclusion of them all in a single loss. 29-264

418. An indemnity selection made subsequent to the regulations of 1879 without a specification of loss, is no bar to the acquisition of rights initiated prior to such specification. 17-592

419. In the case of an indemnity selection list where the losses are not arranged tract for tract, and a tract is included therein that is in fact not lost to the grant, any applicant for a tract embraced within said list is entitled to claim that the failure in the loss assigned relates to his tract. 23-380

420. A selection made without specification of loss and prior to the departmental requirement of such specification is legally made; and the instructions of 1885 do not require a subsequent designation of loss to validate such a selection, though it can not be approved until a loss is duly specified. 17-592

421. A selection of, in which the lost lands are not specified is no bar to a subsequent selection of the same lands with a proper designation of losses. 17-34

422. A selection of land protected by statutory withdrawal will not defeat the perfection of a subsequent preemption claim where said withdrawal is afterwards revoked and the company fails, after due opportunity, to specify a loss as a basis for its selection. 19-423

423. A selection of land excepted from withdrawal is no bar to subsequent appropriation of the land under the homestead law where such selection is not accompanied by a designation of loss. 19-422

424. The substitution of an amended list of indemnity selections on a specification of losses different from that assigned in the first, and where the losses in neither list are arranged tract for tract, must be treated as an abandonment of the first. 17-406; 19-233

425. The amendment of a list of indemnity selections by the designation of losses not assigned in the original, is, to the extent of such substitution, an abandonment of the prior list, and, to that extent, a new selection, and as such it will not bar the completion of a homestead entry made subject to the original selection. 26-595

426. In the absence of any valid intervening adverse claim, a railroad company may file a new selection in substitution for a pending selection covering the same land, the later selection constituting an abandonment of all rights under the

former and taking effect as of the date presented. 36-298

427. The failure of a railroad company to furnish a specification of losses as the basis for a list of indemnity selections can not be excused on the ground that it was due to the erroneous advice of the local officers. 18-511

428. In order that the bases may be specifically designated for losses in an unsurveyed Indian reservation the adjacent surveys may be projected by calculation over such reservation. 20-187

429. The requirement that where selections have been made without specifications of loss such deficiencies should be specified before further selections are allowed may be waived on final adjustment where the grant is deficient and the list submitted contains a proper designation of loss. 16-235

430. The provision in the circular of August 4, 1885, that the company be required to designate the deficiencies before further selections are allowed, is not applicable where the grant is deficient in quantity, and the danger of duplication of losses does not exist. 19-30; 20-162

431. Failure to designate a loss in support of a selection, in limits common to two grants, can not be taken advantage of by the company claiming under the conflicting grant where all the lands in said limits are required to make up the deficiency existing in the grant under which said selection is made. 19-395

432. There is no necessity for enforcement of the rule requiring specifications of loss, where the grant is practically adjusted and found largely deficient, and no one is claiming adversely to the company at such time; and under such circumstances, a selection without designation of loss will be recognized, as against a homestead entry not made until after submission of the adjustment. 25-458

433. A suit to vacate a patent issued to a railroad company under an indemnity selection, on the ground that a proper basis therefor was not designated, will not be advised, in the absence of adverse superior equities, if it appears that the indemnity lands are not sufficient to satisfy the losses in place. 26-694

434. The failure of a railroad company to specify a loss in support of an indemnity selection of lands duly withdrawn in aid of the grant, will not defeat its right, where, prior to revocation of the withdrawal, the grant is found largely deficient. 28-226

435. Indemnity selections are made under direction of the Secretary of the Interior, and enforcement of any requirement in the matter of specification of loss is only for his information, and as a bar to the enlargement of the grant, and may be waived whenever he deems such course advisable. 26-621

436. There has been no departmental recognition of an ascertained deficiency in the Northern Pacific grant; nor has the company been relieved, on account of such deficiency, from the specification of losses in making indemnity selections. 25-512; 26-589

437. Will not be held invalid on account of the basis including a fractional tract that is in fact not lost under the grant, if it appears that the designation of loss, without including said tract, is sufficient to support the selection. 22-373

438. In the absence of statutory direction the right of selection not governed by the coterminous principle. 5-81

439. Selections, regular and legal under the existing construction of the grant at the time when made, should be protected under a changed construction of the grant. 24-370

440. Where a company designates as the basis for a selection land indicated by the records as within an Indian reservation, and it is subsequently ascertained that such tract is not within said reservation, the company is entitled, as against intervening adverse claims, to a reasonable time within which to assign a new basis for said selections. 27-133, 469

441. A selection is an entry or appropriation of land within the meaning of the act providing for repayments. 2-681

442. The term "selection" not applicable to granted lands and no right is acquired thereby. 5-396;

6-750; 7-358; 11-482

443. The "listing" of a tract within the primary limits confers no right upon

the company, if, for any reason, said tract is excepted from the grant. 21-109

441. The mere "listing" of a tract as within the primary limits of a railroad grant does not operate to reserve it from other appropriation; and where a tract so listed is subsequently found to be within the indemnity limits of the grant, no rights thereto on behalf of the company can be recognized prior to selection thereof. 20-175

445. In the preparation of lists of lands granted to aid in the construction of railroads, the lands should be listed to the grantee company or corporation when it is in existence. 24-138

446. The company required to "list" its granted lands. 8-30

447. The failure of the company to "list" lands within the granted limits will not defeat proceedings had to determine the mineral or nonmineral character of the land. 8-30

448. In the exchange of lands, provided for in the act of January 12, 1891, between the United States and the Southern Pacific, the company should file a relinquishment of the lands in lieu of which it proposes to make selections, and present to the local office a formal application to select the lieu lands, as duly listed for such purpose, and pay the statutory listing fees on the selections so made. 24-543

449. The words "to be selected within 20 miles of the road" do not make the grant a "float." 5-135

450. Failure to assert the right of selection within indemnity limits as against a settler until after final proof on his claim is a waiver of such right. (See 20-259.) 5-678

451. Lands "in place" excepted from the grant are not subject to indemnity selection under the same grant. 4-107; 5-432

452. Lands excepted from the grant to the Southern Pacific by homestead entries existing at the date the grant took effect may be taken on behalf of said grant in lieu of mineral lands, if at the date of selection such entries have been canceled, and the lands are free from other claims or rights. 26-452

453. The even-numbered sections within the primary limits of the grant for the

Leavenworth, Lawrence & Galveston road are reserved to the United States, and therefore excepted from the grant to the Missouri, Kansas & Texas road, and can not be taken in lieu of deficiencies in its place limits. 14-164

454. Lands granted to one company not subject to selection as indemnity by another. 6-816

455. Indemnity selection can not be made of land within the granted limits of another road not constructed within the required period, but definitely located and remaining unforfeited by Congress. 5-582; 8-33

456. The Southern Pacific is not entitled to make indemnity selections within the forfeited primary limits of the Atlantic & Pacific grant. 25-351; 29-135

457. Action suspended on that part of the departmental decision of November 5, 1897, herein, which relates to the right of the Southern Pacific to make indemnity selections within the forfeited primary limits of the Atlantic & Pacific grant. 25-393

458. A tract is not excluded from indemnity selection by reason of being within the limits of another grant if it is in fact vacant public land at date of selection and otherwise subject to such appropriation. 9-452; 10-15; 11-138; 13-201; 17-288

459. Land within common limits and excepted from withdrawal is subject to selection by either company or open to settlement and entry. 13-440; 14-79

460. Land excepted from withdrawal by a preemption claim is not excluded from subsequent selection if at the date thereof such claim has expired and been abandoned. 12-19

461. The grant to the Northern Pacific by the act of July 2, 1864, and the grant to the same company by the joint resolution of May 31, 1870, must be adjusted separately; a loss, therefore, under the latter grant will not support a selection along the line for which the grant of 1864 was made. 25-511

462. The separate adjustment of the grants for the main and branch lines precludes the right of selection by the older grants along the line of the later and *vice versa* (St Paul, Minneapolis and Manitoba). 13-354

463. A specification of losses on the St. Vincent extension can not be accepted as the basis for selections on the main line (St. Paul, Minneapolis and Manitoba).

13-440

464. In the selection of indemnity the Ontonagon company is not restricted to lands coterminous with constructed road, but may go beyond the same within the original indemnity limits to make up deficiencies.

13-464

465. Under section 4 of the forfeiture act the Ontonagon company is not entitled to select as indemnity lands formerly embraced within the granted limits of the Marquette road, as said lands were not subject to selection under the original grant.

13-464

466. The provision in the act of January 14, 1889, for release and disposition of Mille Lac lands defeats selection of said lands by the St. Paul & Duluth and Northern Pacific companies.

13-230

467. The order of August 15, 1887, as to filings and entries on lands covered by unapproved selections, made applicable to the second indemnity limits of the Northern Pacific.

7-334

468. Selections may be made within the first indemnity belt irrespective of State or Territorial lines within which the loss occurred (Northern Pacific).

8-13; 24-417

469. Indemnity selections of land in the State of Washington can not be made by the Northern Pacific for losses in the State of Idaho, until it is first shown that such losses can not be satisfied from lands within the limit of the grant in Idaho.

17-404

470. Under the grant to the Northern Pacific indemnity may be taken in one State for losses sustained in another, though said losses might be satisfied from lands within the limits of the State in which said losses occur.

20-187; 26-312

471. The Northern Pacific must exhaust the lands in the first indemnity belt before it can obtain title to lands in the second; but this does not prevent selections in the second belt on proper basis pending final adjustment within the primary limits and first belt.

13-201

472. The right to select within the second belt can not be recognized until it is

made to appear (1) that the grant, in the State in which the selection is sought to be made, can not be satisfied within the limits of the first belt, and (2) that the loss, specified as the basis for such selection, occurred from a disposal subsequent to the act of July 2, 1864 (Northern Pacific).

18-596

473. The right of the Northern Pacific to select indemnity within the second belt can not be recognized, unless it is made to appear that the loss specified, as the basis of such selection, is the result of a disposal occurring in the interval between the date of the granting act and that of definite location.

25-68

474. A selection within the second indemnity belt is not permissible where the loss does not occur subsequent to the act of July 2, 1864, and where it can be satisfied within the first indemnity belt (Northern Pacific).

19-233

475. Lands reserved prior to the passage of the act of July 2, 1864, can not be made the basis of a selection within the second indemnity belt of the Northern Pacific grant.

29-242

476. Land within the second indemnity belt may be selected on a *prima facie* basis without waiting for the final adjustment of the grant within the primary limits and first indemnity (Northern Pacific) belt.

10-15

477. Report called for from General Land Office as to alleged excess indemnity selections in the second indemnity belt of the Northern Pacific grant in the State of Minnesota.

24-141

478. Where the company has used losses to support selections in the first indemnity belt that if free might be used to support selections in the second indemnity belt, substitution of other proper bases for the first indemnity selections may be permitted with a view to releasing the bases originally assigned therefor for use as bases in making second indemnity selections.

36-329

479. The Northern Pacific company is not restricted, in making selection of indemnity under the act of July 2, 1864, and the joint resolution of May 31, 1870, to lands on the same side of the line of road as the lands lost to the grant and assigned as base for the selection.

36-368; 38-378

480. Lands within the withdrawal on general route of the Northern Pacific main line, and also within the indemnity limits of the grant to said company for a branch line, are not subject to selection as indemnity for losses on the branch line while so withdrawn, and the subsequent forfeiture by the act of September 29, 1890, of the lands thus withdrawn precludes the assertion of indemnity claim thereto on account of said branch line.

17-448; 18-255

481. Odd-numbered sections within the indemnity limits of the grant made by the act of July 25, 1866, and also within the overlap with that portion of the prior grant for the Northern Pacific road, *via* the valley of the Columbia River, which was never definitely located or constructed, and the grant for which was forfeited by the act of September 29, 1890, are subject to indemnity selection under said grant of 1866 so far as any claim under the Northern Pacific grant is concerned.

29-440, 442

482. The act of August 5, 1892, is for the sole benefit of settlers and does not confirm selections made by the Northern Pacific within the limits defined by said act.

15-538

483. Inasmuch as the act of August 5, 1892, was passed for the purpose of adjusting conflicts and avoiding litigation, the company in making lieu selections thereunder should not select lands at the time known to be claimed by a settler and thus create another conflict and further litigation.

37-576

484. The occupancy of town lots under a scrip location not such an adverse right or claim as will defeat the right of selection under the act of August 5, 1892, where at the date of selection the scrip has been withdrawn and the occupants and purchasers thereunder disclaim any interest adverse to the company.

25-545

485. So long as an order reserving lands stands unrevoked the lands are not subject to selection under the act of August 5, 1892, notwithstanding the order of reservation was never noted upon the records of the local office, that the lands were never used for the purposes intended, and that the original scheme or purpose

for which the reservation was made has been abandoned.

36-167

486. Paragraph 104 of Mining Regulations not applicable to selections under act of August 5, 1892.

29-254

487. Under the act of June 2, 1864, the *land* of the company to even sections within the 6-mile limits of the grant of May 15, 1856, does not attach until selection, and the right of selection can not be exercised until after definite location of the modified line of road.

10-176; 11-271

488. The act of June 2, 1864, did not work a legislative withdrawal of the even-numbered sections within the original 6-mile granted limits, and in the absence of an Executive withdrawal of said lands no right of the company thereto can attach prior to selection.

26-508

489. Lands excepted from the withdrawal made in aid of the act of June 2, 1864, are not subject to selection thereunder if at the date of such selection a qualified homesteader is residing thereon.

11-271; 26-156

490. A deed executed by the company prior to selection does not alter the status of the tract included therein as "public land" or preclude the subsequent selection thereof by the company.

10-504

491. In case of a contract of purchase made with a railroad company, involving a specific tract within the indemnity limits of the grant, the subsequent selection of such tract by the company will be presumed to have been made for protection of the purchaser.

22-143

492. The pendency of a selection bars other disposition of the land, but a subsequent filing may be allowed to stand subject to the final disposition of the selection.

12-195

493. Selection can not be allowed for land included within a prior *prima facie* valid selection, and such an application should be rejected, not held to await the result of the prior selection.

13-535

494. Selections under the act of June 4, 1897, while of record and awaiting consideration, bar indemnity selection of the same lands under a railroad grant.

31-151

495. The pendency of a motion for reconsideration of adverse action on an in-

demnity selection bars entry of the land involved until final disposition of the question so raised. 27-470

496. The filing of a list of indemnity selections initiates a claim on behalf of the company that can only be defeated on due cause shown why such selections should not be approved. 26-312

497. Until the approval of an indemnity selection no rights are secured thereunder that can be asserted against the Government; and the creation of a forest reservation prior to the approval of a selection within the limits of said reservation is such a disposition of the land as to defeat the selection, even though the tract was subject thereto when selected by the company. 28-281, 363

498. Selection of, pending on appeal, precludes the acquisition of adverse rights by filing or settlement. 14-418

499. During the pendency of an indemnity selection filings should not be recorded for the land covered thereby. 9-250; 10-454

500. A pending indemnity selection excludes the land covered thereby from entry. 2-504; 7-80; 10-15; 12-386

501. Under the circular of September 6, 1887, governing the procedure in case of application to enter land covered by indemnity selections, a hearing will not be ordered where the applicant makes a *prima facie* showing that the land applied for was not subject to such selection and the company does not traverse the allegations made by the applicant. 27-700

502. Under the special circular of 1887 an applicant for the right of entry who attacks the validity of a prior indemnity selection is entitled to the allowance of his application if the company, after due notice, fails to respond and such allowance of necessity works an avoidance of the selection. 29-218

503. Settlement claim can not be recognized for land covered by selection until it is shown that the tract was not subject to selection, and the failure of the company to appear at a hearing ordered to determine the status of the land does not relieve the settler from the necessity of submitting such proof. 10-683

504. The right of a settler residing on land covered by a prior indemnity selec-

tion, and whose settlement is subject to such selection, will attach on cancellation of said selection, if the land is then open to settlement, and defeat the right of the company under a subsequent selection. 26-390

505. At date of the grant and withdrawal the land was within the boundaries of a Mexican claim (Diaz), which was subsequently declared invalid, and thereafter, but before claim of the settler (Ryan), the company (Central Pacific) selected it; held by the Supreme Court that it was public land at date of the selection, and that said selection barred the settlement claim. 2-509

506. The outstanding certification of lands to the State (Louisiana) under the grant of 1856 did not prevent reinvestment of title in the United States by the forfeiting act of July 14, 1870, and is therefore no bar to selection after passage of said act. 16-65; 27-274

507. Lands within pending selections are not restored by the revocation of the withdrawal. 9-74; 10-317; 12-29; 17-406

508. Land covered by an uncanceled homestead entry is not subject to indemnity selection. 7-405

509. Land within a homestead entry, or an unexpired preemption filing, is excepted from indemnity withdrawal, or selection. 17-592

510. Conflict between a selection and a homestead entry may be settled either under the selection or an offer of final proof. 14-79

511. As between an applicant for right of entry and a company claiming under selection, where the application is rejected on account of the selection, and the appeal from such action is dismissed for want of regularity, and in the same decision the selection held invalid, the right of the applicant should be considered when final action is taken on the selection. 23-513

512. An existing homestead entry within indemnity limits made before withdrawal became effective bars selection by the company. 3-304

513. The right of selection can not be exercised upon land covered by existing entries and not protected by withdrawal. 13-230

514. An order revoking an indemnity withdrawal restores the lands to the public domain, and subsequent selection of such land can not be made in the presence of a prior intervening entry. 18-344

515. An entry of land previously withdrawn is no bar to the right of selection if exercised before revocation of the withdrawal becomes effective. 14-111

516. No rights are acquired as against a selection by settlement on lands previously withdrawn for the benefit of the grant. 17-34

517. A homestead entry of land within an indemnity withdrawal which had not been selected at the date of final proof, or prior to the revocation of the withdrawal, is not defeated by a mere protest of the company against the final proof filed while the withdrawal is in force. 17-270

518. An application to enter erroneously rejected, and pending on appeal, is a bar to subsequent selection of the tract as indemnity. 20-288

519. An application to enter, pending on appeal, precludes allowance of indemnity selection for the land. 21-487

520. Selection not defeated by a pending rejected application to enter under which no rights are secured. 18-163

521. A selection should not be allowed for land included in a pending homestead application. 6-649, 666; 7-244; 20-123

522. A settlement right existing at date of indemnity selection excepts the land covered thereby from the selection. 7-182; 20-127

523. The right of a qualified settler in possession of land to perfect title thereto is not defeated by an intervening selection. 24-439

524. An applicant for land within indemnity limits whose application is wrongfully rejected, and who fails to appeal, but remains in possession of the land, is protected as against a selection on behalf of the company made after acquisition of applicant's settlement right. 22-61

525. The right of a qualified settler on land excepted from an indemnity withdrawal defeats subsequent selection under the grant. 17-537

526. Settlement claim precludes indemnity selection of lands not withdrawn. 5-566; 13-167; 19-249; 24-274

527. An indemnity selection of land not protected by withdrawal, and included within a prior settlement claim, is no bar to the subsequent recognition of the settlement right. 26-375

528. Land within a settlement claim is not subject to selection, and failure of the settler to file his claim within the statutory period will not defeat the effect of said claim as against the company, nor limit the extent of said claim to the tract on which the improvements are situated. 17-122

529. It is discretionary with the Secretary whether he will permit a company to select lands occupied by *bona fide* settlers, and he may protect such occupants so far as it can be done consistently with law and due regard to the company's rights. 2-508

530. The authority of the Secretary over the selection of indemnity lands will be exercised to protect a settler who has placed improvements on a tract, and is residing thereon, at the time an indemnity selection is tendered, even though such settler may have failed to make timely filing or entry prior to proffer of the selection. 27-467

531. The ruling of the Supreme Court in *Northern Pacific R. R. Co. v. Colburn*, 164 U. S., 383, does not preclude recognition of settlement rights as against subsequent intervening indemnity selections, for that case dealt with lands in the primary limits, where rights attach at definite location, while in the indemnity limits no right exists prior to selection and approval thereof. 27-361

532. The protection accorded one who has settled on a tract prior to offer of indemnity selection therefor is personal to such settler and not transferable; hence, a purchaser of the possessory claim and improvements of such settler does not thereby strengthen the position resulting from his own settlement on the land, or other initiation of claim thereto, after such selection is noted of record. 27-467, 470, 513; 29-264, 554

533. Settlement on a tract released from indemnity withdrawal, but subject to a pending selection, takes effect at once upon abandonment of said selection and pre-

cludes subsequent selection of said land on account of the grant. 17-406

534. Settlement on land covered by withdrawal attaches at once on the revocation of the withdrawal and will exclude such tract from subsequent selection, and failure of the settler to assert his claim within three months after notice that the land is open to entry can not be taken advantage of by the company. 26-538

535. Pendency of preemptor's appeal reserves the land from selection. 4-232, 405; 5-396

536. A settlement right existing when an indemnity withdrawal is revoked is superior to a subsequent selection. 10-444, 454; 14-192

537. A settlement right within indemnity limits, acquired after revocation of the withdrawal and prior to selection, excludes the land from selection. 9-250; 10-31; 11-494; 16-507

538. A company claiming under a selection within a revoked indemnity withdrawal can not plead insufficient notice of an adverse settlement claim where it appears in response to final proof notice, files protest, and is heard thereon. 11-494

539. Lands occupied and cultivated by qualified settlers, entitled to make entry thereof, are not subject to indemnity selection, and recognition of such right of entry, though irregular, may be permitted to stand. (See 28-572.) 22-257

540. A claim of occupancy, set up to defeat the right of indemnity selection, can not be recognized if it appears that at date of selection the alleged occupant had not established residence on the tract, but was maintaining a home elsewhere in the prosecution of a claim under the preemption law. 25-542

541. A claim of occupancy will not be held sufficient to defeat the right of selection in the absence of actual residence on the land. 24-452; 27-137; 28-572

542. The occupancy of land for the sole purpose of speculating in the improvements thereon does not constitute a *bona fide* settlement that will except the land from indemnity selection. 23-543

543. Improvement of land under the timber-culture law will not exclude the same from indemnity selection. 22-662; 23-1; 27-86

544. Possession and occupancy with intent to enter under timber-culture law do not bar indemnity selection. 30-250

545. Occupancy and improvement of land within indemnity limits by one not asserting any right adverse to the company, but expecting to secure title through the company, is no bar to selection. 27-404, 435

546. A claim of residence will not be accepted as sufficient to defeat a railroad indemnity selection if it does not affirmatively appear that the occupant was duly qualified to assert a claim under the settlement laws at the date of said selection. 27-694

547. Occupancy of a tract in connection with settlement and residence upon adjoining land operates to exclude such tract from indemnity selection. 27-78

548. Prior to adjoining farm entry residence on the original farm, with cultivation of the adjacent tract, is not residence on said tract, and does not constitute a claim that will exclude it from indemnity selection. 27-348

549. A homestead settler who makes entry of part of the land embraced in his settlement claim thereby abandons the remainder; and the land thus released from said claim is thereafter open to indemnity selection. 27-134

550. A settlement claim will not defeat a selection where at such time the settler was asserting a similar claim, under another law and for a different tract, which he subsequently perfected. 19-516

551. Of land occupied by one who at such time had exhausted his rights under the settlement laws is not defeated by the subsequent qualification of the occupant to make a second homestead entry under the act of March 2, 1889. 22-99

552. Settlement of an alien no bar to selection. 10-463

553. Residence and improvement by an alien, prior to declaration of intention to become a citizen, will not defeat the right of the company to make indemnity selection of the land. 27-357

554. Of land within an unexpired filing is subject to the rights of the preemptor, and the company can not take advantage of his failure to occupy and improve the land. 10-499

555. No rights are secured by selection of lands embraced within an unexpired preemption filing of record. 14-692; 17-592

556. Land covered by an expired preemption filing, but on which the preemptor is residing, is not subject to selection. 14-605

557. On application to select land covered by an expired filing, where it does not affirmatively appear that the preemptor has in fact abandoned his claim, a hearing should be ordered to determine the status of the tract at date of selection. 6-613

558. Land covered by an uncanceled preemption filing is not subject to indemnity selection, though the statutory life of said filing may have expired without final proof and payment having been made thereunder. 21-423

559. An expired preemption filing under which no claim is asserted does not exclude the land covered thereby from indemnity selection. 9-452; 11-138; 13-637; 17-288; 28-496

560. Expired filing of record does not bar selection unless it be shown that the preemptor had not in fact abandoned the land (St. Paul, Minneapolis & Manitoba Railway). 8-291

561. An indemnity selection for land in a preemption filing, under which residence has been duly established and maintained, will not defeat the right of the preemptor to subsequently transmute his claim to a homestead entry. 26-340

562. On application to select land covered by an expired filing a hearing should be had to determine the status of the land (St. Paul, Minneapolis & Manitoba Railway). 8-291

563. Lands within a forest reservation, established by order of the President, are not subject to indemnity selection. 27-122

564. Lands within the area added to the reservation of the Gros Ventre and other Indians by Executive order of April 13, 1875, as modified by order of July 13, 1880, come within the purview of the act of May 1, 1888, restoring the lands ceded by the Gros Ventre and other Indians to the public domain, but are not subject to

selection as indemnity by the Northern Pacific under the act of July 2, 1864. 37-410

565. The right of one holding under a purchase from the railroad company is no bar to selection of the land as indemnity. 18-193

566. During the pendency of judicial proceedings that affect the status of lands under a grant, selections therefor should not be allowed. 12-88

567. The designation of a tract as the basis of an indemnity selection at the time the right to said tract is in dispute between the company and a homesteader must be construed as a waiver of the company's claim in favor of the entryman. 22-688

568. Where a company makes selection in lieu of land apparently excepted from the grant, and in consequence the basis of said selection is subsequently entered under the homestead law, the company is estopped from claiming the land so entered, even though it was not in fact excepted from the grant. 19-227

569. Procedure in case of application to enter lands covered by an unapproved selection. 10-504

570. Directions given for publication of notice advising settlers of the pendency of indemnity selections and contemplated action thereon. 18-511

571. No action should be taken on selections for lands covered by expired filings until after notice to the claimants to assert any rights they may possess. 11-595; 12-88; 13-349

572. Directions given for the publication of selections on behalf of the Florida Railway & Navigation Co. that may be covered by former entries made under the "armed occupation acts." 12-553

573. For the protection of settlement rights recognized by the confirmatory act of February 8, 1887, action will not be taken on selection lists until after publication of notice (New Orleans & Pacific). 15-346

574. An application of the company for return of selection fees on cancellation of a selection and the acceptance of such repayment is a waiver of the company's claim to the land. 12-545

575. Failure of a railroad company to perfect a selection within a reasonable

time after notice of final decision recognizing the right of selection works an abandonment of its prior right, where the withdrawal has been revoked and an adverse claim intervened. 24-145

576. Consent of the company to a judicial decree recognizing the validity of an entry under which settlement rights are alleged is an abandonment of its pending selection of the land so far as the rights of the settler are concerned. 11-271

577. All fees and costs must be paid before favorable action can be taken upon list of selections. 15-346; 20-22; 24-543

578. The provision in the appropriation act of July 30, 1876, requiring payment by railroad companies of the cost of surveying, selecting, and conveying the lands, is of a general and permanent nature. (See 2-669.) 2-463

579. A departmental decision canceling railroad indemnity selections takes effect as of the date of the decision, and the lands affected thereby are thereafter subject to selection by the first qualified applicant. 18-511

580. If a railroad company desires to correct a list of selections it should first file application for permission to make such correction, which should be considered by the General Land Office, having due regard for intervening rights. 27-545

581. Where a fractional section has been described differently under the original survey of April 27, 1869, and the Carpenter survey of April 6, 1894, and selection thereof is made by a railroad company under the description given in the original survey, such selection should be considered as a selection of the tract as described under the later survey, and patent should issue accordingly. (See 37-243.) 31-272

582. The eastern terminus of the grant to the Northern Pacific was fixed by the Land Department at Duluth, but the Supreme Court of the United States subsequently held the grant to extend as far east as Ashland. A selection by the company between these points was held for cancellation under the ruling of the Land Department, but subsequently reinstated under the decision of the court. After the selection was held for cancellation and prior to reinstatement thereof a home-

stead application was tendered for a portion of the selected land.

Held: That the mere presentation of the application to enter, not based upon settlement, was not sufficient to bar reinstatement of the company's selection. 37-426

(For decisions under act of March 2, 1899, authorizing Northern Pacific Railway Co. to make selections in lieu of lands relinquished in Mount Rainier National Park and Pacific forest reserve, see RESERVATION, 356-382.)

VIII. Lands Excepted.

See IV, V, HEREOF.

583. Lands forming part of the bed of the Missouri River at date of the grant, and covered by the waters of the main channel at such time, were not public lands subject to the grant. 22-341

584. The effect of section 17, act of July 2, 1864, was not to make a new grant but to provide a new beneficiary under the original grant of July 1, 1862, as to the Sioux City branch, and said beneficiary could only take such lands as were capable of passing under the original grant, and would therefore not acquire title to lands that were a part of the bed of the Missouri River at the date of the original grant. 24-29

585. Congress reserved all claims recognized by the Government from the operation of the grant (Central Pacific). 1-341

586. Land in reservation at the date of the grant and definite location is excepted from the terms of the grant. 4-94, 429

587. The provision in section 2, act of March 3, 1863, with respect to settlement rights "on any of the reserved sections" refers to the even-numbered sections, not granted. 8-570

588. A subsisting order of the President withdrawing lands for the use of Indians excepts the land covered thereby when the grant takes effect. 5-432

589. Lands embraced within a technical Indian reservation at date of definite location of the Northern Pacific are reserved from the operation of the grant. 5-138; 16-229

590. Land at date of the Northern Pacific grant in an Indian reservation created by treaty is excepted from the grant, though at definite location such land has been relieved from the reservation subject only to the right of Indian occupancy; and the provisions in section 2 of said grant with respect to extinction of Indian title are not applicable to land that acquires the status of Indian country after date of the grant, but is included in a technical reservation prior thereto.

22-568

591. Lands within a reservation created for Indian purposes do not occupy the status of lands granted subject to the right of Indian occupancy. Lands so reserved when the grant becomes effective are absolutely excepted therefrom, and when released from such reservation become a part of the public domain.

17-587; 28-494

592. The executive order of May 16, 1855, withdrawing certain lands for a contemplated Indian reservation, was made with due authority, and lands embraced therein at the date of a subsequent grant were excepted therefrom, even though released from such withdrawal prior to definite location of the road.

17-420

593. Lands embraced within the Camp Verde Indian Reservation at date of definite location of the road are excepted from the grant, and the subsequent release of said lands from reservation will not inure to the benefit of the grant.

17-554

594. At the date of the grant to the Northern Pacific the lands in Bitter Root Valley "above the Lolo fork" were included in the Indian reservation created by the treaty of April 18, 1855, and therefore excepted from the grant.

19-532; 20-90

595. Lands in Bitter Root Valley above the Lolo fork, included in the reservation made by the treaty of 1855, and surveyed under section 2, act of June 5, 1872, are excepted from the grant to the Northern Pacific.

26-43

596. The lands in the Bitter Root Valley, being reserved for use of the Indians, were not public lands free from "other claims or rights" when the Northern Pa-

cific filed its map, and therefore were not affected thereby.

1-368

597. Land within a military reservation at date of definite location is excepted from a grant, and no subsequent act of

the Executive could render the land subject thereto.

7-430

598. The approval of a military reservation, by the Secretary of War, as theretofore defined by the military authorities, is the legal equivalent of the President's order to the same effect; and lands so reserved are excepted from the subsequent operations of a railroad grant on definite location.

29-261

599. A reservation of public lands by the military authorities operates as a segregation thereof; and no rights attach thereto under a railroad grant upon the subsequent definite location of the line of road.

38-496

600. The act of June 10, 1880, abolishing Fort Seward Military Reservation, was a legislative recognition of such reservation as an exception from the grant to the Northern Pacific, and the law to govern the disposition of the lands embraced therein.

6-657

601. The proclamation of the President under the act of June 18, 1878, withdrawing from sale and disposal certain lands required for reservoir purposes, did not affect the status of lands to which rights under a railroad grant had attached by definite location.

25-451

602. Failure to officially inform the local office of an Executive order releasing land from a military reservation will not operate to reserve such land as against the grant.

12-465

603. Erroneous action of the local office in designating land as within a military reservation will not defeat operation of the grant.

12-465

604. The clause "that any and all lands heretofore reserved to the United States by any act of Congress . . . for the purpose of aiding in any object of internal improvement . . . be, and the same are hereby, reserved to the United States from the operation of this act," construed.

4-573

605. The grant of public lands made to the Northern Pacific Railway Co. by the

act of July 2, 1864, does not include areas covered by glaciers, and such areas in the Mount Rainier National Park or Pacific National Forest may not therefore be accepted as bases for lieu selections by said company under the provisions of the act of March 2, 1899. 40-441

606. Lands within the grant to the Atlantic & Pacific are expressly excepted from the later grant to the Southern Pacific; and the forfeiture of certain lands granted to the former company confers no rights upon the latter to select lands never embraced in its grant. 11-534

607. Definite location of the Northern Pacific did not take effect upon lands within the previous indemnity withdrawal made under the act of May 5, 1864. 11-607

608. The lands reserved for idemnity purposes under the grant of June 3, 1856, are excluded by express terms from the grant made by section 3, act of May 5, 1864, and the lands so reserved, but not required as indemnity, do not become subject to the latter grant on the final adjustment of the former. 10-63; 11-615

609. The decisions of the department as to the effect of the indemnity withdrawal under the act of June 3, 1856, upon the subsequent grant of May 5, 1864, are reversed by the decision of the Supreme Court in the Forsythe case. 22-33, 78

610. Lands within the withdrawal on general route of Northern Pacific and within the indemnity limits on definite location thereof are excepted from the subsequent operation of the St. Paul, Minneapolis & Manitoba grant. 12-395, 398

611. Lands within 10 miles of the probable route of the Lake Superior & Mississippi, included in the withdrawal on account of the grant to aid in the construction of said road at the date of the act making the grant to the Northern Pacific, were not "public lands," and for that reason were excepted from the Northern Pacific grant. 31-32, 432

612. Lands embraced within the grant made by the act of May 4, 1870, in aid of the construction of the Oregon Central, were not "public lands" within the meaning of the grant to the Northern Pacific made by the joint resolution of May 31,

1870, and were therefore excepted from that grant. 37-272

613. Lands reserved on account of a prior grant at date of the act of July 2, 1864, making the grant to the Northern Pacific, are excepted from the latter grant, but do not afford a basis for the selection of lands within the second indemnity belt of that grant, provided for by the joint resolution of May 31, 1870. 30-403

614. The withdrawal made on behalf of the wagon-road grant of July 5, 1866, operates to except the lands so reserved from the attachment of rights on definite location of the Oregon & California road under the grant of July 25, 1866. 26-688

615. The unappropriated odd sections within the primary limits of the grant of June 10, 1852, were not "reserved" when the grant of 1866 was made to the Atlantic & Pacific, and passed to said company when found in the primary limits of its grant. 12-116

616. For the St. Vincent extension is a new grant, later in date to that made for the main line, and lands withdrawn as indemnity for the benefit of the latter are excepted from the subsequent operation of the grant for the branch line. 14-545

617. Lands embraced within the indemnity withdrawal for the benefit of the main line of the St. Paul, Minneapolis & Manitoba road, under the grant of March 3, 1857, are not by such reservation excluded from the operation of the subsequent grant of 1871 for the St. Vincent extension of said road. 25-86

618. Lands within the indemnity limits of the Northern Pacific, and primary limits of the grant of March 3, 1871, for the St. Vincent extension of the St. Paul, Minneapolis & Manitoba Railway, and not included within the withdrawal on general route of the Northern Pacific, passed under said grant of 1871. 29-115

619. The withdrawal of June 3, 1869, on account of the main line of the St. Paul, Minneapolis & Manitoba Railway did not extend north of a line drawn due east from Breckenridge, and a preemption filing after such date for lands in the indemnity limits on said main line, north of said easterly line, was properly allowed, and being of record and unexpired at the date of the definite location of the St.

Vincent extension of said road, served to except the lands covered thereby from the grant made on account of said extension.

18-120

620. The prior adverse right of a town settlement defeats selection under the act of August 5, 1892, to the extent of the lands that may be entered by the town settlers under the land laws.

18 258

621. If the grant is a present one and the title does not vest when the grant takes effect, it can not vest afterwards.

1-336, 362, 366; 5-13

622. The act of July 1, 1862 (Pacific roads), granted "public lands," but defined them as those which were public at date of definite location of the roads.

2-480

623. Land *sub judice* at the date the grant becomes effective is excluded therefrom.

4-100, 357, 397

624. The grant of May 4, 1870, is a float and does not take effect upon specific tracts until definite location, and a homestead entry made prior to such location excepts the land covered thereby from the grant though no exception is made therein of lands thus appropriated (Oregon Central).

14-283; 26-592

625. A homestead entry of record at date of definite location excepts the land covered thereby from the grant of June 3, 1856, as revived by the later acts.

15-390

626. Land not free at definite location does not pass.

5-138

627. Lands embraced within homestead entries or preemption filings at the date of a grant, or at the time it takes effect, are excepted from the operation of the grant.

25-503

628. An unexpired preemption filing existing of record at the date of a grant excepts the land covered thereby from the operation of the grant.

27-46; 28-94, 575

629. Does not take land covered by homestead entry at date of granting act though said entry is subsequently canceled.

1-388; 16-488; 17-265

630. Land embraced within a subsisting homestead entry at the date of the grant of July 4, 1866, is excepted therefrom though said entry may be canceled prior to the definite location.

15-431

631. Land within a preemption claim at date of, is excepted therefrom though such claim is abandoned at definite location.

15-36; 23-588

632. The ruling of the Supreme Court in the case of *Bardon v. Northern Pacific Railroad Co.*, as to the effect of a claim at the date of the grant to that company, is equally applicable to the Hastings & Dakota grant.

19-20, 215

633. Land embraced within a homestead entry at the date of the grant to this company (Hastings & Dakota) is excepted therefrom, though said entry is canceled prior to definite location.

19-20

634. Land embraced in the claim of a qualified settler at the date a grant becomes effective is excepted from the operation of the grant.

19-225, 270

635. Land embraced in a homestead entry at the date of the granting act is excepted from the operation thereof, whether said entry has been perfected at such time or not.

20-514

636. Land embraced in a homestead entry at the passage of the act of June 2, 1864 (13 Stat., 95), is not of the character authorized to be certified under said act on account of the modified line provided for therein.

20-228

637. Land covered by *prima facie* valid entry when the right of the road attached is not granted.

1-362; 4-206, 281, 405, 421, 438;

5-396; 8-378; 9-654; 12-545

638. Entry of record at date of definite location excepts the land covered thereby, though it appear the settler had abandoned his claim.

6-750

639. The effect of a *prima facie* valid entry existing when the grant became operative unchanged by the subsequent declaration of the entryman that the entry was fraudulent

4-421

640. A homestead entry of record at date of definite location excepts the land from the grant, and the entryman's subsequent compliance with the law is immaterial.

11-535

641. A homestead entry of record at date of filing of map of definite location (Northern Pacific) defeats the grant as to the tract embraced in the homestead claim, notwithstanding the entryman was at that

date in default and the lifetime of the entry had expired. 38-217

642. The company will not be heard to question the validity of an entry or filing except under allegation that the claim is void *ab initio* because the alleged settler was not in existence at the date of the record. 11-533

643. Does not take effect upon land covered by an entry at date of definite location, and the subsequent cancellation of the entry does not affect the status of the land under the grant. 11-157

644. Homestead entry of single man made through an agent while in naval service held to defeat the grant. 3-446, 479

645. Land included within a suspended entry at definite location is excepted from the grant. 12-572

646. Pending reinstated entry within indemnity limits excepts the land covered thereby. 6-444

647. Lands covered by entries or filings, and so excepted from the grant, inure to the public domain on the cancellation of said entries. 2-505; 3-166; 7-357

648. An entry erroneously allowed to remain of record after final judgment of cancellation can not operate to except the land covered thereby from the subsequent effect of a grant. 20-191

649. That the cancellation of an entry was not noted of record until after definite location, though ordered prior thereto, would not operate to defeat the grant. 7-163

650. The fact that an order canceling an entry is not received at the local office until after definite location, though made prior thereto, will not operate to defeat the grant. 12-59

651. Erroneous allowance of an entry can not divest the company of its right under the grant. 11-430

652. A homestead entry, improperly allowed of lands withdrawn for the benefit of a railroad grant, confers no right as against the grant; nor does the successful contestant of such entry secure any right against said grant. 19-11

653. Precedence as against a grant is accorded a homestead entry made on the day the map of definite location was filed. 2-570; 5-356

654. Land within the granted limits of the road (St. Paul & Pacific, now St. Paul, Minneapolis & Manitoba) which was covered by an entry (homestead) subsisting at date of the grant, was excepted from said grant. 2-501

655. An entry (homestead) of record when the State conferred the grant on the company (Hastings & Dakota), though allowed after withdrawal, excepted the land from the grant. 2-541

656. An application to enter, erroneously rejected and pending on appeal, serves to defeat a railroad grant on definite location as to the land covered thereby. 23-433

657. The right of purchase under section 2, act of June 15, 1880, defeats the operation of, at definite location. 5-333, 529; 6-8; 11-596

658. Right of purchase under section 2, act of June 15, 1880, excepts the land from the effect of definite location, and can be exercised as against the grant at any time prior to patent. 12-310

659. The right of a widow to purchase under section 2, act of June 15, 1880, existing at date of definite location, defeats the claim of the company. 3-490

660. An entry under the act of June 15, 1880, existing at definite location excepts the land from the grant, without regard to any subsequent decision as to the validity of such entry. 7-148

661. Right of purchase under section 2, act of June 15, 1880, can not be set up by one who claims no interest through the original entryman, for the sole purpose of defeating a grant. 15-81

662. A mineral application made after the filing of the map of general route, and prior to definite location, and pending at the latter date, is a claim under the excepting clause in the grant to the Northern Pacific that operates to exclude the land from said grant. 25-72

663. Existence of a preemption claim at date of definite location excepts the land from operation of the grant. 1-366, 380; 5-553; 9-221; 10-464

664. Subsisting preemption and homestead claims at the date when the grant took effect excluded the lands covered thereby (Central Pacific). 1-336

665. Preemption claim existing when the line of road is designated excepts the land included therein; on the subsequent abandonment of the claim the land reverts to the public domain. 9-173

666. In determining whether, under the grant of July 2, 1864, land is free from a preemption or other claim or right, the validity of the claim is not material. 7-238, 354

667. A railroad company is precluded from inquiring into the validity of claims existing within its granted limits at date of definite location (Union Pacific). 7-13

668. A *prima facie* valid preemption filing of record at the date when the right of the company attaches excepts the land covered thereby from the operation of the grant. 7-13, 85;

8-380; 10-54, 288, 568, 645;
11-1, 143, 163, 195, 224; 12-2;
13-97; 14-9, 237, 656, 664; 17-263

669. An unexpired preemption filing of record at definite location raises a *prima facie* presumption of the existence at that time of a preemption claim sufficient to except the land covered thereby from the operation of the grant (Union Pacific). 9-595

670. Land covered by a preemption filing and settlement at definite location is excepted from the operation thereof, and the validity of the claim can not be questioned by the company (Northern Pacific). 7-354

671. Land within an unexpired preemption filing at the date of the grant made by the act of July 1, 1862, is excepted from the operation of said grant. 29-86

672. A *prima facie* valid unexpired preemption filing of record when the grant becomes effective raises a presumption as to the fact of the claim that is conclusive as against the grant in the absence of an allegation which, if proven, would render the filing void in its inception. 10-645; 11-224

673. That a preemption filing was made without settlement or that the preemptor did not subsequently comply with the law are facts that can not be shown to defeat the effect of an unexpired filing as against the grant. 10-288, 645; 17-263

674. A *prima facie* valid preemption filing existing at date of definite location

excepts the land from the grant, and the fact that the preemptor did not reside upon or improve the land does not relieve the grant from the effect of the filing. 11-163, 225; 17-288, 592

675. Land covered by a *prima facie* valid preemption filing when the grant to the Oregon and California company becomes effective is excepted therefrom, and failure of the preemptor to comply with the law does not defeat the exception. 12-232

676. Under the terms of the grant of July 25, 1866, wherein lands "preempted" are excepted therefrom, a tract covered by a valid subsisting preemption filing at date of definite location is taken out of the operation of said grant. 22-254

677. Land within an unexpired preemption filing at the date of the grant of July 25, 1866, is excepted from the operation thereof. 29-268; 30-51

678. A settler upon surveyed land within the limits of the grant of July 25, 1866, prior to definite location of the road, who does not file preemption declaratory statement until after definite location, has no such claim as serves to except the land from the operation of said grant. 30-51

679. A preemption declaratory statement covering unsurveyed lands, not refiled within the time required by the act of May 30, 1862, after survey of the lands, is not sufficient to except the lands from the grant to the Oregon and California Railroad Co. made by the act of July 25, 1866. 40-48

680. Existence of a *prima facie* valid preemption filing at the date when the grant becomes effective excepts the land covered thereby even though such filing may embrace an excessive acreage. 12-567

681. Under the grant to the St. Paul, Minneapolis & Manitoba company the existence of a filing when the grant became effective will raise a presumption of right which, in the absence of proof to the contrary, is conclusive as against the grant. 8-380

682. Lands covered by an unexpired preemption filing at the date when the grant becomes effective are not subject to operation of a grant from which are excepted lands to which the "right of preemption"

has "attached" when the line of road is definitely fixed. 10-575, 684

683. A hearing to determine the validity of an unexpired filing of record at date of definite location will not be ordered in the absence of an allegation that the claim had in fact ceased to exist at said date (Union Pacific). 9-595

684. A declaratory statement filed after the map of general route (Northern Pacific) was accepted, but alleging settlement prior to such acceptance, does not establish the fact of settlement as alleged, and a hearing will be required to settle the status of the tract at the date of the statutory withdrawal. 7-235

685. A declaratory statement filed after the attachment of rights under definite location is ineffective as against the operation of a railroad grant. 26-57

686. A preemption filing made after the map of definite location is filed, alleging settlement prior to notice of withdrawal, will not in itself defeat the operation of a grant. 25-15

687. A preemption settlement upon land within the limits of a railroad grant, for which filing was not tendered at the local office until after definite location of the road, does not except the tract from the grant. 30-490

688. While a railroad company can not attack a declaratory statement of record on the ground of noncitizenship of the claimant, it will be heard on such charge where acts of settlement are relied upon to defeat the grant. 26-57

689. A preemption claim, based on alleged settlement prior to definite location, and filing made prior to notice of withdrawal, can not be held to defeat the operation of a grant where the fact of settlement is not clearly established, and the preemptor has failed to show due maintenance of his claim after his filing, and it further appears that the land involved has been, for a long term of years, in the adverse possession of one against whom the preemptor is estopped from setting up his alleged settlement right. 26-28

690. A mere allegation of settlement prior to definite location will not work an exception of the land where the filing in which such allegation appears is not made

until after the rights of the road have attached. 12-384

691. An expired filing of record when the grant becomes effective is not a "preemption claim" that excepts the land covered thereby from the grant. 10-645; 14-624

692. An expired preemption filing of record at the date when a railroad grant becomes effective is not an existing claim that serves to defeat the operation of the grant (Oregon & California). 28-477

693. If an expired preemption filing is found of record when the grant becomes effective, it will be presumed that the claim of the settler is abandoned, but such presumption is open to rebuttal. 10-645

694. An expired preemption filing, of record at date of attachment of rights under the grant (Northern Pacific) does not except the land from the grant. 31-254

695. An uncanceled preemption filing of record at the date the grant becomes effective excepts the land from the grant, even though at such time the statutory life of the filing has expired. 21-165; 23-15; 24-141, 195

696. An uncanceled preemption filing excepts the land from the operation of a grant on the definite location thereof. 21-123, 263

697. Land within a preemption filing of record at the time a railroad grant becomes effective is excepted from the grant, and the company is not entitled to question the legality of the filing or the qualifications of the preemptor. 24-21

698. An expired preemption filing upon "offered" land is not an existing claim, and does not constitute a preemption or other lawful claim within the meaning of the excepting clauses in section 3, act of July 1, 1862. 28-76, 128

699. Expired preemption filing at date of definite location does not except the land if the preemptor is not then asserting any claim under said filing. 15-552

700. Land covered by an expired filing at definite location should not be awarded the company without a hearing to ascertain whether the preemptor had at such time abandoned his claim. 5-520, 613

701. The expiration of a preemption filing without final proof and payment will

not alone be accepted as proof of abandonment of the settlement claim at such time, so as to relieve a railroad grant therefrom. 19-225

702. A preemption filing on unoffered land under which proof and payment are not made prior to public offering raises no presumption of occupancy as against the subsequent operation of a grant. 13-22

703. By the express terms of section 14, act of September 4, 1841, failure to make final proof and payment under a preemption filing for unoffered land prior to the day fixed for the sale thereof operates to extinguish all rights under said filing, and though not formally canceled of record such filing will not thereafter serve to defeat the attachment of a, on definite location. 26-680

704. Preemptive rights under a filing for a tract of unoffered land are not terminated by a proclamation of offering and sale where the land is subsequently withheld from such offering. A filing occupying such status is a subsisting record claim that will except the land covered thereby from the operation of a grant on definite location. 29-613

705. The fact that a preemption filing is made in violation of an Executive order for the benefit of a railroad grant will not relieve said grant from the operation of said filing against the subsequent definite location of the road where said order has expired by limitation prior to such location. 18-429

706. A preemption filing fraudulent *ab initio* because there is in fact no such person as the alleged preemptor is a nullity and ineffective as against the grant. 10-662

707. Land within an expired filing is not excepted from the grant of May 15, 1856 (Iowa), in the absence of a preemption right at definite location. 8-546

708. A preemption filing accepted by the local officers and placed of record, subsisting at date of definite location of the Union Pacific opposite the tract covered thereby, excepts said tract from the grant made by the act of July 1, 1862, to aid in the construction of said road, without regard to the qualification of the person making such filing. 31-442

709. Burden of proof upon company to show that a preemption filing for land within the limits of the grant is not valid. 1-379

710. Land not excepted from, by fraudulent preemption claim existing when the grant took effect. 1-390

711. Where the tract was covered by a preemption filing at date of the grant (Texas and Pacific) and withdrawal (on preliminary line) the burden rests upon a subsequent claimant (preemption), alleging that the filing excepted it from the grant, to show that the said filing was a valid claim. (See 7-18.) 2-550

712. The act of May 6, 1870, was a present grant, absolute and unconditional, to the Central and Union Pacific roads, conveying certain specified tracts. A filed a preemption claim on one of said tracts May 19, 1869, and relinquished it March 29, 1871, on which day B made homestead entry thereon; held that, as there was no privity between B and A, B's case was not within the provision of said act protecting the rights of private persons. 2-844

713. Under the original grant to the Central Pacific and the amendatory act of 1864 the equitable claim of a settler is protected. 7-406

714. Under the excepting clause in the grant to the Central Pacific providing that the odd-numbered sections granted are those "to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed," the cultivation and improvement of a tract at such time does not constitute a preemption claim that has "attached" within the meaning of said grant. 27-182, 297

715. The mere occupancy of lands with a view to their possible entry under the public-land laws, prior to the time those laws were extended to the territory so occupied, can not be considered as attaching a homestead or preemption claim to the lands so as to defeat the operation of the grant made in aid of the construction of the Union Pacific railroad by the act of July 1, 1862. 33-528

716. Nonmineral land is not excepted from the grant to the Northern Pacific by reason of a "claim" thereto under the mining laws, unless the claim is one which

has been asserted before the local land office and is pending of record there at the time the line of the road is definitely fixed. 27-286

717. Land not free from "preemption or other claims or rights" does not pass, and the validity of such claims is not material (Northern Pacific). 8-379

718. A claim resting on settlement, residence, and improvement existing when the grant becomes effective is within the excepting phrase "occupied by homestead settlers" (Northern Pacific). 8-362; 10-258, 386; 11-584; 21-123

719. The exception in the third section of the grant to the Northern Pacific applies not only to settlers who have made entry, but also to those who are entitled to make entry. 10-427

720. Where a settlement right is set up on behalf of an Indian to defeat the operation of a railroad grant at a time prior to the act of 1875, it must appear that said Indian was a citizen of the United States, in that he was an "Indian taxed," or subject to be taxed, under the laws of the State, or the United States. 20-401

721. The unauthorized occupancy and possession of public land by an Indian does not operate to except the land from the grant to the Northern Pacific. 21-457

722. Homestead settlement claim of an Indian who has abandoned the tribal relation, existing at date of definite location, excepts the land covered thereby. 10-440

723. The occupancy of an Indian who has not abandoned the tribal relation, existing at date of definite location, will not except the land from operation of the grant. 11-50

724. The occupancy of land by an Indian, at the date the Northern Pacific grant became effective and prior to the act of July 4, 1884, will not except such land from said grant if at such time the Indian had not abandoned the tribal relation. 11-304; 18-305; 25-478

725. The unauthorized possession and occupancy of land by nontribal Indians at date of withdrawal on general route will not except the land from operation of the grant; nor will the fact that the homestead privilege was subsequently conferred upon such Indians protect them as against the grant. 18-549

726. Occupation by qualified preemptor at date of withdrawal on preliminary line of Texas & Pacific excepts the land. 3-164

727. Land occupied and claimed by a qualified preemptor at the date the grant became effective is excepted therefrom (Northern Pacific). 12-299

728. Claim of a qualified preemptor based on residence and improvement existing when the grant to the Southern Pacific becomes effective excepts the land from the grant. 12-479

729. Land under cultivation at date of definite location is excepted from the grant to the Northern Pacific even though the claimant did not at such time reside on the land. 11-583

730. The claim of a qualified settler who has for a long period maintained residence on unsurveyed land and is in occupation thereof at date of withdrawal on designated route, though not then residing thereon, is sufficient to except it from a grant that protects the occupancy of a homestead settler. (Act of July 25, 1866.) 11-571

731. A settlement claim on land within the idemnity limits of the New Orleans & Pacific grant is protected by section 2 of the act of February 8, 1887. 14-365

732. The mere possession and cultivation of land, without actual residence, does not bring claimant within the protection extended to "actual settlers" by section 2, act of February 8, 1887. 29-244

733. The occupancy of a tract in connection with land covered by an original homestead entry, with a view to establishing a claim thereto as an additional homestead, excepts the tract so occupied from a railroad grant on definite location. 23-381

734. The possession and occupancy of a qualified settler existing at definite location except the land, even though the settler at such time is not asserting any claim under the public-land laws. 15-112

735. Land within the settlement claim of a qualified preemptor at date of definite location is excepted from the grant even though such claim is never asserted by a filing or entry. 22-292

736. The occupancy of a tract by a qualified preemptor at date of definite location

excepts the land from the grant; and the fact that the subsequent filing of the pre-emptor did not include said tract can not be taken as proof that he had abandoned his claim thereto at the time the grant became operative. 22-93

737. Possession, occupancy, and improvement of a tract by a qualified claimant at definite location except the tract from the grant though the claimant had not at such time established residence on the land. 16-343

738. Possession of land with valuable improvements thereon at definite location by one qualified to assert a settlement claim defeats the grant. The fact that the claim subsequently set up by such occupant is not under the settlement laws in no manner affects his rights. 16-80

739. Possession and occupancy by a qualified settler except the land at definite location of the road; and the subsequent failure of the claim asserted by the settler leaves the land open to the first legal applicant. 17-40

740. A settlement right existing at the date when the grant becomes effective excepts the land from the operation of the grant. 1-341;

5-274; 6-151, 172, 224, 485; 7-182; 8-58, 362, 365, 378; 10-290; 26-252

741. When possession and occupancy alone are relied upon to except land it must affirmatively appear that the party in possession had the right to assert a claim under the settlement laws. 11-531,

568, 584; 12-554; 14-362; 22-609

742. A claim of occupancy, set up to defeat a grant, will not serve such purpose if the qualifications of the alleged settler and the character of the occupancy are not made to appear. 26-16

743. Where the facts and circumstances surrounding the use and occupancy of land overcome the presumption that the occupant intended to claim the tract under the public-land laws, the occupancy must be regarded as a mere trespass, and not sufficient to except the land from operation of the grant. 18-224

744. A preceptor who has made an affidavit in support of a railroad selection, to the effect that he was not residing upon the tract embraced within said selection, at the date the company's right attached,

is estopped from setting up a contrary state of facts, as against the heirs of one who subsequently purchased said tract from the company. 26-28

745. A claim resting on settlement, residence, and improvement existing when the grant becomes effective excepts the land from operation of the grant. 8-520, 542; 18-454

746. A preemption claim based upon settlement, occupancy, and improvement existing at the date the grant attaches excepts the land from operation of the grant. 7-406; 9-213; 10-281; 11-443, 589

747. Settlement on unsurveyed land within the granted limits by intending homesteader excepts the land from the grant. 3-130

748. Where a tract of unsurveyed land within the primary limits of a railroad grant was at date of definite location of the road in good faith occupied by a qualified homestead settler, and by conveyance and connected and continuous occupancy the right passed from one settler to another down to date of filing the township plat of survey, the rights of the settler are superior to claim of the company under its grant. 39-5

749. Failure of the homestead settler to make entry within the statutory period does not subject to the operation of the grant the land covered by his settlement. 4-256; 10-427, 637; 11-271

750. The settlement of a qualified pre-emptor, though unprotected by a filing, prior to the attachment of the grant excepts the land therefrom. 6-98; 7-131

751. The settlement and occupation existing when the right of the road (Central Pacific) attached, of one who had failed to assert his claim thereto, excepts the tract from the grant. 3-264, 271

752. A claim that land is excepted from the grant to the Central Pacific on account of adverse occupancy can not be recognized, if it does not appear that residence was established prior to the time the grant became effective. 22-408

753. When a preemption claim has attached by settlement, though the settler may be in laches with his filing, the land is excepted from a grant which is limited to lands free from such claims, and abandon-

ment after filing does not affect the question. 3-117

754. The settlement right of a preemptor existing at date of definite location excepts the land from the grant although at such date the preemptor had failed to make proof and payment. 1-357; 6-520

755. A valid settlement claim existing when the grant becomes effective excepts the land therefrom, and failure of the settler to place his claim of record can not be called in question by the company. 11-482, 571

756. Defeated by preemption claim for offered land existing at definite location though the settler had failed to make proof and payment within the statutory period. 4-353; 5-473

757. A railroad company is not entitled to plead the status of a "purchaser" as against a preemptor who fails to purchase within the statutory period. 1-380; 3-271; 5-474; 6-520; 7-133; 9-221

758. Does not take effect upon land covered by preemption claim though filing was not made in time, such default being only to the advantage of the "next settler." 1-380

759. If the preference right of purchase under a preemption claim exists at definite location, the land is excepted thereby though actual habitation may have ceased prior thereto. 5-553

760. Where a preemption right was extinguished on the day of public sale (1858), but the preemptor was still maintaining settlement, etc., at date of definite location (1863), the tract was not excepted from the grant. (See 11-445.) 2-525

761. Final proof and payment for part of a preemption claim leaves the remainder subject to, on the subsequent attachment of rights under the grant. 16-251; 17-66; 26-379

762. A preemptor who makes homestead entry of part of the land embraced within his filing thereby abandons all right under his preemption claim, and though the filing may not, at such time, be canceled, it is thereafter not evidence of the existence of a preemption claim, and will not defeat the operation of a grant as to the tract not included in the homestead entry. 23-539

763. A preemptor who makes homestead entry of part of the land embraced within

his filing thereby abandons all right under his preemption claim, it is thereafter not evidence of the existence of a preemption claim, and will not defeat the operation of a railroad grant, as to the tract not included in the homestead entry. 9-402; 12-351

764. The abandonment of a settlement right after the grant became effective does not render the land subject thereto. 5-274; 6-172, 326, 485; 10-290

765. To establish the allegation that a tract is excepted from a grant by reason of a settlement thereon it must be shown that when the grant became effective there was a valid subsisting settlement of one qualified to perfect his claim. 7-228; 23-436

766. A settlement claim that will defeat the operation of a grant must be of a character capable of being asserted by the party in possession under the settlement laws. 19-569

767. An application of a settler to purchase the land settled upon from the railroad company will not preclude his subsequently asserting a settlement right thereto, where the land is then open to such disposition. 20-288; 26-375

768. The subsequent change of the settler's intention to take the land as a preemption claim, and his appropriation thereof under the desert land law, are matters not affecting the right of the company. 21-472

769. An existing settlement when the public land laws were extended over the Territory bars operation of the grant. 4-341

770. The purchaser of a possessory right who settles on a tract of land and occupies and improves the same, does not forfeit his settlement right as against a railroad grant by subsequently attempting to secure title through the company, where such action is taken to protect said settlement right, and is repudiated by the settler as soon as he learns the land is subject to entry. 20-138

771. The uncontradicted testimony of one witness may be accepted to establish the fact that a tract of land was covered by a preemption claim when the grant became effective. 9-213; 10-464

772. Where settlement is made on the day the right of the road attaches the land should be awarded to the settler.

1-331

773. A hearing will not be ordered as between a company and a settler where the settler has submitted final proof that makes a *prima facie* case for him and no showing to the contrary is made by the company.

16-93

774. The possession and occupancy of one who has exhausted his rights under the settlement laws will not except the land from the operation of a grant.

11-531
15-53; 23-331

775. Residence on land, in reliance on the company's title, can not be held as conferring any right as against the company.

22-143

776. Occupancy by one who intends to purchase from the company is not effective as against the grant.

12-322; 15-159, 552

777. Occupancy at definite location by one who holds under the company, and asserts no right under the settlement laws, will not defeat the grant.

11-471

778. The possession and occupancy of land, based on a purchase from the company of a portion thereof, does not constitute a claim that will except the land from the operation of the grant on definite location.

29-224

779. Settlement at date of definite location by a qualified settler excepts the land from the grant even though such settler is ignorant of his right and holds the land under the belief that it is subject to the grant.

12-554

780. Land embraced within the occupancy of a qualified preemptor at date of definite location is excepted from the grant, whether the settler then sought to secure title from the company or the Government.

19-184, 229

781. The occupancy and improvement of land at date of definite location of the Union Pacific road, do not constitute a preemption claim that has "attached" at such time, within the meaning of the excepting clause in the grant to said company.

28-18

782. Occupancy and cultivation of a tract at definite location by one who subsequently makes timber-culture entry thereof, do not except said tract if the

entryman was not qualified to take the land under the settlement laws when the grant attached.

19-28

783. Possession and occupancy of a tract, at date of definite location, with intent to subsequently enter the land under the timber-culture law, do not serve to except it from the operation of the grant.

19-452

784. A settlement on public land with intent to appropriate the same under the desert-land law does not operate to except the land from the effect of a grant.

23-247

785. Purchase of the possessory claim and improvements of another confers no right under the settlement laws that will defeat the operation of a grant.

15-69

786. A settlement right as against a grant can not be acquired through the possession of a tenant.

15-69

787. Inclosure and use of land without settlement thereon does not except it from a grant.

15-544

788. An allegation that land is excepted from, by a settlement claim is not established by showing that the tract is included within a large body of land improved and occupied as a whole for a cattle ranch.

11-463

789. Temporary settlement on known coal land, abandoned shortly thereafter, under which no right or color of right is acquired under the settlement laws, does not operate to except land from the grant to the Northern Pacific.

16-144

790. An allegation that land is excepted from, by reason of a settlement claim will be investigated even though such action may not inure to the benefit of the applicant.

11-444

791. Recognition of the company's claim by the widow of a preemptor will not estop the Government or the heirs of the preemptor from asserting title.

9-221

792. Not defeated by settlement where the filing showed that the land was not claimed thereunder.

4-401

793. A mere allegation that land not covered by a preemption filing was in fact embraced within the claim will not be accepted as sufficient to defeat the grant.

12-471

794. The citizenship of a settler can not be questioned by the company if on the

date of its selection a certificate of naturalization issues to the settler who is then on the land. 10-444

795. Settlement of an alien not effective as against. 6-98, 615;

11-89, 354; 12-507

796. Settlement of an alien is not effective as against the operation of the grant, and the subsequent qualification of the settler will not relate back to defeat the grant. 11-354

797. An affidavit as to the citizenship of a settler claiming adversely to a railroad indemnity selection, duly served on the company, may be accepted as a satisfactory showing in such matter, in the absence of any countershown on behalf of the company. 28-563

798. The occupancy of a trespasser at the time the grant becomes effective does not except the land from the grant. 6-322

799. Does not take effect upon land included within an application to locate a military bounty land warrant. 14-278

800. Not defeated by an unauthorized location of scrip on unsurveyed land prior to definite location. 18-290

801. The sale by a State of land to which it has no title can not be recognized as excepting the land from the operation of a railroad grant. 26-227

802. Does not take effect upon land within the claimed limits of an adjudicated private claim. 1-392

803. Though subsequently excluded from the private claim, the land, being *sub judice* when the grant became effective, did not pass thereunder. 6-33

804. Takes land excluded from private claim prior to the date when the right of the road attached. 5-415

805. The status of lands lying upon the boundary lines of a private claim determined by the major portion thereof. 4-98

806. Where the tract was within the exterior limits of a Mexican claim (Moquelamos) which was *sub judice* (in the courts) at date of the grant and withdrawal it was not public land and did not pass to the company (Western Pacific). 2-510

807. Where the tract was within the exterior limits of rancho (by the La Croze survey) at the date of the grant

(Central Pacific), but was segregated therefrom (by the approved and confirmed Stratton survey) at date of Executive withdrawal and of definite location, it was public land and inured to the grant. 2-477

808. Where the tract was in the exterior limits of a rancho (San José) as surveyed at date of filing map of designated route (Southern Pacific), but was excluded therefrom by a subsequent approved survey, it was excepted from the grant. (See 15-36.) 2-546

809. The rancho claim (Millijo or La Punta) was rejected finally in 1855 and application to purchase made in 1869 under section 7, act July 23, 1866; the grant was made in March, 1871, and withdrawal (on preliminary line) in October, 1871; in 1872 sale of the land was suspended pending consideration of the application, which in 1873 was rejected; held that the land was subject to the grant and reserved for the company (Texas Pacific) though definite location of the road has not yet been made. 2-548

810. The right under the grant remains the same whether the survey proceedings in the private claim were dismissed for want of "prosecution" or "jurisdiction." 4-100

811. Does not take effect upon land within the claimed limits of a private land claim. 5-691

812. Lands not finally required to satisfy a private claim for a specific place are not excepted from. 11-491, 538

813. A private claim for land within specific boundaries reserves only such land as may be finally determined to be within said boundaries, as against the operation of a railroad grant, though other land may be claimed as within said boundaries at the time such grant takes effect. 12-664

814. Does not take effect upon lands that are at the date of the grant embraced within the claimed limits of a Mexican private grant by specific boundaries, though at such time the question of the true location of said boundaries is pending and undetermined. 25-108

815. Lands within the larger outboundaries of an unlocated private claim of quantity are subject to the operation of,

except as to the quantity actually required to satisfy the claim. 9-471;

11-49, 463; 12-507

816. Lands within an odd-numbered section, and within the outboundaries of a private claim of lesser quantity, but not required in satisfaction of the private claim, nor included within the survey of such claim at the time of the attachment of rights under a railroad grant, are subject to the operation of said grant.

29-608

817. A mere squatter upon a portion of an odd-numbered section within the primary limits of the grant to the Atlantic and Pacific made by the third section of the act of July 27, 1866, at the date of the attachment of said grant, without recognition or protection by law or treaty, who applies to make entry of such land as a "small holding claim," under section 17, act of March 3, 1891, as amended by act of February 21, 1893, has no such claim as will except the land from the operation of said grant.

32-83

818. Lands within the primary limits of the grant to the Atlantic and Pacific, now Santa Fe Pacific, by the act of July 27, 1866, and also within the claimed limits of the Laguna Pueblo private land grant, being *sub judice* at the date of the grant to the company, are by force of the act of July 22, 1854, excepted from the operation of that grant.

39-424

819. Land embraced within a survey of a private claim under section 8, act of July 23, 1866, is not excepted from the grant if a copy of the plat is not filed in the local office before the grant becomes effective.

10-630

820. Survey of a private claim under the act of July 1, 1864, not approved by the surveyor general, the commissioner, or the Secretary, is not effective as against the operation of a grant.

11-491

821. The survey of a private claim that is not approved by the surveyor general is not effective as against a grant.

11-538

822. The right of purchase under section 7, act of July 23, 1866, existing at the date the grant becomes effective excepts the land covered thereby.

14-536

823. Pending application under section 7, act of July 23, 1866, does not except

the land from operation of withdrawal on preliminary line.

2-548

824. *Prima facie* valid school selection excepts land from the effects of.

4-437

825. A school indemnity selection, made prior to statutory authority therefor, does not reserve the land so selected from the operation of a railroad grant.

17-43;

21-316; 22-515

826. A voidable State selection covering land at the time the rights of the road attached excepts the land from the grant.

3-88, 501; 7-350

827. Discovery of the invalidity of school selection after the right of the road attached will not aid the grant.

4-437, 579

828. A *prima facie* valid school selection of record when the grant becomes effective excepts the land; and subsequent cancellation of the selection does not affect the status of the land.

11-49

829. The notation of a swamp-land selection, appearing of record at the date a railroad grant becomes effective, will not except the land, where prior thereto the approval of such selection has been revoked and the selection itself superseded by subsequent lists.

24-163; 25-203

830. Under the grant of February 9, 1853, lands covered by *prima facie* valid swamp selections when it became effective were excepted therefrom (St. Louis, Iron Mountain & Southern Railroad Co.).

11-157

831. A swamp-land selection pending at date of definite location excepts the land covered thereby from the operation of.

15-121

832. Land embraced in an uncanceled donation notification is excepted from the operation of a grant on definite location.

23-392; 28-345

833. A donation claim of a married man embracing more than 320 acres is not void, but voidable only, and land included therein, at the time when a grant becomes effective, is excepted from the operation of the grant.

24-4

834. Where the land was reserved for the settler (donation) at date of definite location (Northern Pacific) it was excepted from the grant.

2-440

835. A donation claim, void on its face, does not except the land covered thereby from the grant. 2-522; 22-349

836. An abandoned donation claim, though uncanceled of record at date of definite location, does not except the land from the grant. 38-259

837. Land embraced within a notification of a donation claim, at the time a railroad grant becomes effective, is excepted from the grant, though claims of such character are not specifically named in the excepting claim of the grant. 22-308

838. Land embraced within the notification of a donation claim at the date of the grant and the definite location of the road is excepted from the grant, though claims of such character are not specifically named in the excepting clause. 23-569

839. Does not take effect upon land held under donation settlement at date of definite location though the donee had failed in the matter of filing notification. 1-305

840. Donation claim of record prior to attachment of rights under the grant and asserted until after said grant becomes effective excepts the land from the grant. 12-238

841. The inadvertent notation of a scrip location will not except the land covered thereby from the operation of a railroad grant that takes effect prior to discovery of the error. 19-227

842. Settlement claims protected under the act of February 8, 1887, not affected by the fact that the land was included within a grant to another company where such grant was subsequently forfeited. 8-377

843. Under section 2, act of February 8, 1887, lands occupied by actual settlers at definite location of the road (New Orleans, Baton Rouge & Vicksburg) and still remaining in their possession are excepted from the grant. 8-377; 10-637; 13-157

844. Section 2, act of February 8, 1887, does not protect a claimant whose settlement, on indemnity lands, is not made till after selection by the company, and who claims no interest through a prior settler. (New Orleans Pacific.) 21-246

845. The intent of section 2, act of February 8, 1887, was to protect in their possession only those who were actual settlers at date of definite location, or other qualified persons to whom they might thereafter have assigned their possessory rights. 25-61

846. An assignee of an alleged settler at the date of definite location who claims the benefit of section 2, act of February 8, 1887, is not entitled thereto, if such settler was not qualified at such time to assert a settlement claim. 26-418; 27-274

847. The recognition of the Blanchard-Robertson agreement in section 4, act of February 8, 1887, is limited to the protection of persons who on December 1, 1884, were occupying lands to which the company was entitled (New Orleans & Pacific). 10-637

848. The act of February 8, 1887, in confirming the grant of 1871, provided that it should not take effect upon lands that were free when the grant to the original grantee took effect, but only upon such lands as were free when the New Orleans & Pacific was definitely located. 13-157

849. The lands upon which the grant of 1866 would operate were not identified until the passage of the joint resolution of 1870, which saved the rights of actual settlers (Southern Pacific). 1-626

850. Joint resolution of June 28, 1870, protects prior settlement within indemnity limits (Southern Pacific). 3-321; 5-380

851. The right to either granted or indemnity land of actual settlers on June 28, 1870, though settlement was made after withdrawal, was saved by joint resolution of that date authorizing construction of the road on the route indicated by the map filed in 1867. 2-559

852. An entry of land embraced within the act of May 6, 1870, granting certain lands for a common terminus of the Central and Union Pacific companies, may be permitted to stand as against the protest of one of said companies, it appearing from the status of lands covered by said act that the purposes of the grant made thereby can not be accomplished. 23-326

IX. Mineral Land.

853. Circular of July 9, 1894, announcing manner of proceeding to determine mineral or agricultural character of lands. 19-21, 105

854. Selections in mineral belt, circular of July 9, 1894, modified. 24-321, 416

855. Circular of September 9, 1904, relative to notice to railroad grantee of the filing of applications for patent to mineral lands. 33-262

856. Instructions of July 25, 1895, as to designation of deputy surveyor to assist mineral commissioners, under the act of February 26, 1895. 21-68

857. Classification of lands under the act of February 26, 1895; instructions of August 10, 1895, as to hearings. 21-108

858. The act of February 26, 1895, providing for the classification of lands within the Northern Pacific grant, with respect to their mineral or nonmineral character, does not suspend the action of the department in its administration of the land laws in the land districts affected, nor suspend mineral locations or entries. 21-65

859. The Northern Pacific, in making selections within the limits of its grant, will not be required to make a showing as to the nonmineral character of lands so classified under the act of February 26, 1895. 29-503

860. A description by the commissioners appointed under the act of February 26, 1895, in their report of lands examined and classified, as "all not patented of" a designated section, clearly and with certainty indicates the particular parts included; and such classification and report are therefore within the requirements of sections 3 and 5 of that act. 35-471

861. In classifying unsurveyed lands under act of February 26, 1895, where the entire area of the tract, as designated by natural or artificial boundaries, is of the same character, classification should be made without reference to the particular section. 26-423

862. A final mineral return by the commissioners appointed under the act of February 26, 1895, operates to except the lands so classified from the grant to the Northern Pacific. 25-446

863. The classification of land under section 6, act of February 26, 1895, does not take effect, and is in no sense final, until approved by the Secretary of the Interior. 32-24

864. The Secretary has the power to disapprove a classification made under section 6, even though no protest be filed against the same, if such classification does not correctly represent the character of the land. 32-24

865. The act of 1895 does not have the effect of suspending mineral locations made prior to its passage, nor does it apply in cases where, prior to approval of the classification, claimants under the mining laws have *prima facie* established, through proper proceedings, the mineral character of the land, and their claims have passed to entry. 32-24

866. The act of February 26, 1895, does not authorize classification of lands in even-numbered sections, and the fact that lands in an even section were classified as mineral under that act is no bar to selection thereof by the railway company, where such lands were returned as non-mineral at the time of survey. 37-68

867. The fact that lands were classified as mineral under the act of February 26, 1895, will not prevent selection thereof by the Northern Pacific under the act of March 2, 1899, if otherwise within the terms of that act. 37-135

868. The question as to the character of land for which selection is tendered by the railway company under the act of March 2, 1899, is solely between the Government and the company, and where no protest is lodged against a selection, *prima facie* regular and in accordance with the terms of the act, upon the ground that the land selected is mineral in fact and was known to be such at the time of selection, the company will be permitted to perfect its claim. 37-135

869. The Land Department is without authority to patent to the Northern Pacific any lands in the districts named in the act of February 26, 1895, prior to the classification of said lands as nonmineral. 31-395

870. The act of February 26, 1895, limited the classification of lands within the limits of the Northern Pacific land

grant in the State of Idaho to the Coeur d'Alene land district, and where lands in said State outside of that district were classified as nonmineral, and the classification approved, notice of the listing or selection of such lands will be required to be given, as to such of the lands as are within 6 miles of a mining claim, in the manner provided by the regulations of July 9, 1894, notwithstanding such classification and approval. 31-394

871. To justify a hearing as to the character of land classified under the act of February 26, 1895, where protest is not filed until after the prescribed time, and after approval of the classification by the Secretary, such a showing of fraud in the classification must be made as would condemn and avoid it, if sustained by proof at the hearing. 29-120

872. The classification of land as mineral under the act of February 26, 1895, and the final approval of such classification by the Secretary is in effect a cancellation of a previous selection of said land by the Northern Pacific company; and thereafter the company, or any one claiming right or title through said company, can not be heard to question the character of the land, except upon the ground of fraud in such classification. 29-675

873. Railroad companies in giving notice of application for patent under the circular of July 9, 1894, will be required to describe by sections and by portions of sections when less than a section is selected, in the public notice, the lands covered by their applications, except where the list covers all the odd-numbered sections in a township, in which case the notice can so state. 21-381

874. A protest in which no specific allegation is made as to mineral in any particular tract does not warrant a hearing as to the character of the land, or further suspension of the list, where due notice of the application has been given as required by the regulations of July 9, 1894. 21-387

875. Land chiefly valuable for deposits of fire clay is included in the exception of "mineral lands" from the grant to the Northern Pacific. 25-349

876. Lands chiefly valuable for petroleum are excepted from selection as indemnity. 25-351

877. Lands chiefly valuable for deposits of asphaltum are not subject to selection as indemnity under a railroad grant from which mineral lands are specifically excepted. 29-269

878. Lands containing valuable mineral deposits, whether of the metalliferous or fossiliferous class, of such quantity and quality as to render them subject to entry under the mining laws, are "mineral lands" within the exceptions from the grant to the Northern Pacific company for railroad purposes, and to the State for school purposes. 25-233

879. Land principally valuable for marble and slate is mineral within the meaning of the excepting clause in the grant to the Northern Pacific. 29-327

880. Lands more valuable for saline deposits than for agricultural purposes, or that contain valuable deposits of salines that will justify expenditures for their extraction, are "mineral lands" within the exception from the grant to the Southern Pacific made by act of July 27, 1866. 35-149

881. Land is excepted as mineral where the development and its results display such promise that a prudent man would be justified in expending money and labor in legitimate mining operations. 15-439

882. The location of a mine on tract prior to a grant does not establish the fact of the mineral character of such tract and operate to except the same from the grant where mineral does not exist in paying quantities and mining operations have been abandoned. 15-463

883. The nonmineral character of free odd sections being shown, title thereto passes under the grant (Central Pacific). 8-30

884. Lands "classified as nonmineral" at the time of actual Government survey are of the class subject to selection under the act of August 5, 1892, and the character of lands so classified and selected will not be investigated on indefinite charges, or protests alleging mineral locations made after survey and selection. 29-254

885. A hearing to determine the character of land claimed under a railroad grant, but returned as mineral, will not be allowed in the absence of application to select and due notice. 8-30; 9-613

886. On a corroborated allegation that certain land patented to the company is excepted from its grant by reason of its known mineral character, a hearing may be ordered to ascertain whether the facts justify judicial proceedings for recovery of title. 11-590

887. The authority of the department to order a hearing between the company and a mineral applicant as to the character of the land is not abridged by a prior *ex parte* proceeding on behalf of the company in which the land was found to be agricultural. 12-608

888. Hearing to determine the mineral or nonmineral character of a tract should not be ordered until an affirmative showing as to its agricultural character is made where a showing to the contrary has been made by a mineral claimant. 15-247

889. An adjudication by the Land Department that a tract of land within a railroad grant is mineral in character is not effective to except it from the grant in the face of a subsequent adjudication, as result of a hearing, that the tract is not and never was mineral in character; and having passed to the company under the grant, the Land Department is without authority to make other disposition thereof. 39-169

890. An adjudication by the Land Department, in a proceeding in which that question is in issue, that lands within the primary limits of a railroad grant were at the date of the grant mineral in character, so long as it stands unimpeached, excepts them from the operation of the grant; and no rights attach thereto under the grant upon a subsequent adjudication by that department, in another proceeding, that the lands in question are at that time nonmineral. 39-288

891. Does not operate to pass title to mineral land. 18-105

892. Prior to approval of a selection the land, if mineral in character, is open to exploration and purchase under the mining laws. 24-172

893. The discovery after patent that the land is mineral does not affect the title taken under the grant (Central Pacific). 5-193

894. Land known to be mineral prior to issuance of patent is excepted from the grant to the Central Pacific. 5-193

895. A decision of the local office holding land within the granted limits (Central Pacific) to be nonmineral, after hearing ordered to test that question, will be approved in the absence of appeal. 8-30

896. The discovery of the mineral character of land at any time prior to patent, or certification where patent is not required, excludes such land from a grant which contains a provision excepting all mineral lands therefrom (Central Pacific). 11-238

897. "All mineral lands" are excluded from the grant to the Central Pacific, and until patent issues the department has authority to determine the character of land claimed under the grant, and this is true though the company may have sold the land. 12-608

898. The burden of proof is upon the company (Central Pacific) to show the agricultural character of land returned as mineral. 13-603

899. The Northern Pacific is not entitled to notice from the General Land Office, with the view to appeal, where mineral claims are approved for patent and the record shows discovery and location of the mine after definite location. 13-691

900. The discovery of the mineral character of land at any time prior to patent excludes such land from the grant to the Northern Pacific. 14-699; 17-274, 545

901. The Southern Pacific grant expressly excludes mineral lands, and it can not select such lands as indemnity. 13-165

902. Selections of lands for the Southern Pacific in lieu of lands taken for the Mission Indians under the act of January 12, 1891, can not be approved unless (1) the company was entitled under its grant to the lands so taken, hence that such lands are nonmineral in character, and (2) that the lieu selections are of the same character. 25-368

903. Patents issued to the Atlantic and Pacific should expressly exclude "all mineral lands other than coal and iron lands."

12-116

904. A patent under a grant "excepting and excluding all mineral lands should any such be found to exist," does not reserve to the department the power and authority to subsequently inquire into the character of the lands.

19-410

905. In the adjustment of, the non-mineral character of lands can not be considered as established by the fact alone that the returns of the surveyor general do not show said lands to be mineral.

16-262

906. Lands otherwise of the character to pass under the railroad grant made by the act of May 17, 1856, are not excepted by the fact that they contain phosphate deposits. (See 25-233.)

19-414

907. The act of May 17, 1856, making a grant to the State of Florida, does not in express terms include or exclude mineral lands, but in view of the settled policy to reserve such lands from grants to States or corporations for any purpose, all such lands, whether valuable for phosphate or other mineral deposits, are excepted from the grant.

26-600

908. The word mineral in the act of June 22, 1874, does not include phosphate deposits.

19-414

909. Though the mineral character of a tract is admitted by the railroad company, in a judicial proceeding instituted for possession thereof by the company, yet the department, in administration of the law, is required to determine the actual character of the land in question.

19-188

910. There is no authority for insertion, in patents under railroad land grants, of the clause, "excepting all mineral land, should any such be found in the tracts aforesaid;" and in all future railroad land-grant patents said excepting clause will be excluded.

32-342

X. Indian Title.

911. The Indian title resting in occupancy alone was that which the grant of July 2, 1864, undertook to extinguish.

1-368

912. A stipulation in the grant of July 2, 1864, with respect to the extinction of Indian titles did not include permanent reservations or land reserved before the grant was made.

1-368

913. The extinction of Indian title after the right of the road attached will not inure to the benefit of the grant.

4-429

914. The "Indian title" referred to in the second section of the grant (Northern Pacific) did not include rights protected by technical reservation.

5-138, 343; 16-229

915. The fee simple of lands to which the Indian title had not been extinguished along the line of the Northern Pacific and within the limits of the grant passed to said company subject only to the right of Indian occupation, which the Government at its pleasure could extinguish. (See 16-229.)

7-100

916. Legal subdivisions of odd-numbered sections lying south of Goose River (which formerly constituted the northern boundary of the Indian country claimed by the Sisseton and Wahpeton Sioux) inured to the Northern Pacific grant on extinction of the Indian title.

5-670

917. Settlement and residence on an odd-numbered section partly within the former boundaries of the "Indian country" claimed by the Wahpeton and Sisseton Sioux and wholly within the grant to the Northern Pacific does not, on extinction of the Indian title, confer any right as against the grant if on that part of the land within the Indian country.

11-502

918. On the extinguishment of, the withdrawal under the grant becomes effective and excludes the acquisition of settlement rights.

2-519

919. Of lands subject to Indian occupancy pass to the company subject to such right, excluding settlement claims thereto.

14-300

XI. Rights of the State.

920. The department will not interfere with the discretion of a State in disposing of lands granted in aid of internal improvement.

5-81

921. The State as trustee must determine what lands the company shall receive in case of conflicting limits and

where one road is not constructed, and the department has no authority to direct the State in such matter. 1-345, 374

922. The grant to a State in aid of a railroad is not an absolute conveyance, but a trust, and the State taking as trustee is limited in execution of the trust to the purposes expressed in the act of Congress. 8-37

923. The location of a road within a State fixes the extent of the grant for the benefit of the State. 3-242

924. Relinquishment of the State (Minnesota) under its act of March 1, 1877, after selection cuts off the right of the company. 4-300; 6-128

925. A patent issued by the State on account of the Manitoba grant, prior to the State act of March 1, 1877, is no bar to the State relinquishing thereunder a tract embraced in such patent for the benefit of a settler, if at the passage of said act the company had not earned title to said land. (See 30-191.) 29-291

926. The Northern Pacific took nothing by the decree of the United States Supreme Court (139 U. S., 1) in its favor against the St. Paul & Pacific, as to lands properly relinquished by the State under act of March 1, 1877, prior to institution of said suit. (See 30-191.) 29-291

927. The granting act of 1856 (Alabama) withheld from the State power to dispose of the granted lands except as the several roads were constructed, and such a tenancy in common was created in trust in favor of the several intersecting roads as to deprive the State of power to confer the grant on one or to dispose of it for the benefit of one to the exclusion of the others. 2-476

928. Whether the only power of disposal in the State (Alabama) was to make distribution for quantity to extent of lands earned by a completed road, leaving the residue, either as an undivided share or segregated by act of partition, for future disposal in favor of any intersecting road as completed; or whether the State may set over lands outside of intersecting lines for the benefit of that road only to which they properly attach, and may apportion lands within intersecting lines, as purely a

matter of State concern, subject only to judicial and legislative control: *Quære*. 2-476

929. Prior to March 3, 1865, the disposal of lands granted to Minnesota, as in other States, was governed by act of March 3, 1857, namely, that on completion of specific sections the quantity of land as described "may be sold," and certification was the uniform mode of identification; the act of March 3, 1865, requiring patents to issue upon completion of the sections gave no direction as to the manner of disposal by the State; but by the act of July 13, 1866, the power of disposal by the State was expressly recognized to take effect after definite location and identification of the lands by certification. 2-495

XII. Relinquishment.

See XIII HEREOF.

930. Relinquishment of rights under a withdrawal estops the assertion of any claim thereunder as against a subsequent settler. 14-694

931. Where a homesteader, prior to definite location of the road, acts on the company's relinquishment of the land the company is estopped from claiming the land as against him. 18-435

932. The acceptance of the benefits of the State act of March 1, 1877, imposes upon the company the conditions of said act and authorizes a reconveyance by the governor of lands occupied by settlers at the date of said act (St. Paul, Minneapolis & Manitoba Railway Co.). 7-184; 10-507

933. By accepting the terms of the State in extending the time for constructing the road the company (St. Paul & Pacific) relinquished claims in favor of actual settlers and authorized the governor to reconvey such lands to the United States. 4-300, 509; 6-128

934. The governor's relinquishment under the State act of 1877 for the benefit of a settler on a listed tract within the primary limits divests the company of all title. (St. Paul, Minneapolis & Manitoba Railway Co.) 14-449

935. It is not within the province of the department to review the action of the

governor of Minnesota in the execution of a relinquishment under the State act of March 1, 1877. 12-615

936. The relinquishment of a tract by the governor of Minnesota under the State act of March 1, 1877, reinvests the Government with full title, and the validity of such relinquishment is not affected by the fact that the settler in whose favor it was made did not attain his majority until after the passage of said act. 12-615

937. An applicant for the right of entry is not entitled to plead the benefit of the State act of March 1, 1877, if the land in question was not one of the tracts described in the deed of relinquishment executed under said act, and the applicant was not a settler thereon at the date of said act. 27-160

938. The right of the St. Paul, Minneapolis & Manitoba Co., successors of the St. Paul & Pacific Co., did not attach under the act of March 3, 1871, until the release required by said act was executed. 12-512

939. Made by the act of March 3, 1871, did not take effect until the relinquishment provided for therein was duly filed and accepted by the Secretary of the Interior. 23-408, 541; 24-141

940. Lands to which legal title was perfected in the St. Paul & Pacific Co. prior to the State act of March 1, 1877, were excepted from its effect, and a subsequent deed of reconveyance from the State of such lands would not invest the department with jurisdiction. 9-509; 12-354

941. A relinquishment of lands in the original withdrawal on general route, and not within the amended route, should not be applied by the Government as against the company, in view of the fact that said relinquishment was at the instance of the department, and that the second withdrawal is not effective under the law. 18-435

942. The State relinquishment of lands granted to the Marquette Co. was an abrogation of the withdrawal of June 13, 1856, and restored said lands to the public domain. 6-649

943. The Mobile & Girard's acceptance of the conditions imposed by the act of

September 29, 1890, and the relinquishment filed thereunder are held sufficient to furnish the proper basis for action in the adjustment of the grant. 12-118

944. The acceptance of the relinquishment filed by the Mobile & Girard under the act of September 29, 1890, waives no objection to the sufficiency of said instrument not apparent on its face. 12-118

945. The Gulf & Ship Island Railroad Co., by accepting the provisions of section 7, act of September 29, 1890, and executing the relinquishment required thereunder, did not forfeit its right to indemnity for lands relinquished prior thereto. 22-560

946. The relinquishment of the Gulf & Ship Island Co. executed under section 7, act of September 29, 1890, covered earned lands of the company not included in the relinquishment of 1884, on which filings and entries had been allowed after said relinquishment; and for the lands so relinquished under the act of 1890 the company is entitled to select other lands in lieu thereof from the odd or even sections within the indemnity limits of the road actually constructed. 22-560

947. The rights of actual settlers within the limits of the grant prior to March 16, 1881, protected by the relinquishment of the company (Florida Railway & Navigation Co.). 9-34

948. A relinquishment made with full knowledge of the law and facts is regarded as absolute and unconditional, notwithstanding a reservation in it of the company's right to indemnity; questions concerning the date of filing the map, the date of withdrawal, or the right to indemnity do not affect its validity. 2-534, 535

949. Where the company (Atlantic, Gulf & West India Transit, now Peninsular) relinquished certain granted lands in 1875 and 1881 in favor of actual settlers they can not be heard to object to the patenting of the settlement claims on said lands. 2-531, 564

950. Where withdrawal for the road (Atlantic, Gulf & West India Transit Co.) was made in 1856 and the map of definite location filed in 1860, but returned for amendment and lost, and a duplicate map

was not approved until 1881, relinquishment is necessary to protect the rights of settlers initiating claims in violation of the Executive withdrawal of 1856 and of the legislative withdrawal of 1860.

2-561

951. Relinquishment in favor of actual settlers applies to indemnity limits as well as to granted (Atlantic, Gulf & India Transit Co.).

3-186

952. Hearings directed where settlers on selected land claim the benefit of relinquishment (Florida Railway & Navigation Co.).

4-148

953. Entries and filings allowed on unselected land on *prima facie* showing that the claim is within the terms of the relinquishment.

4-148

954. The company given opportunity to contest claim of settlers to the benefit of the relinquishment.

4-148

955. The Commissioner of the General Land Office to determine who are entitled to benefit of the relinquishment.

4-150

956. If the fact of a settlement right is conceded, the burden is upon the company to show that the benefit of the relinquishment has been waived by subsequent acts (Florida Railway & Navigation Co.).

9-34

957. Lands relinquished in favor of a settlement claim can not again be claimed by the company (Florida Railway & Navigation Co.) even though the settler fails to perfect his entry.

12-547

958. The relinquishment of the company in favor of *bona fide* settlers is not defeated by failure of the settler to place his claim on record; nor will his subsequent purchase of the land from the company defeat his right under the relinquishment (Florida Railway & Navigation Co.).

12-301, 549

959. The relinquishment of June 25, 1881, filed by the grantee under the act of May 17, 1856, was for the benefit of *bona fide* settlers, and one who in fact never effected a settlement is not entitled to the benefit thereof.

14-103

960. The relinquishment of June 25, 1881, in favor of "actual *bona fide* settlers" does not extend to one who was at said date not a qualified settler, being a minor and not the head of a family.

14-288

961. The effect of the general relinquishment executed by the company June 25, 1881, for the benefit of certain settlers did not depend upon the subsequent compliance with law on the part of such settlers, but operated as a final waiver of all right to the lands embraced therein (Florida Railway & Navigation Co.).

15-3; 20-79

962. Lands covered by entries when the general relinquishments for the benefit of settlers were executed by the Florida Railway & Navigation Co. should not be subsequently listed where such entries have been canceled without proof that there were no entrymen or settlers entitled to the benefit of the relinquishment.

15-528; 21-120

963. The act of August 5, 1892, does not provide for relinquishment and selection in case of an entry under which the claim was not initiated prior to January 1, 1891.

19-531

964. By a railroad company of a tract falling within the terms of its grant can not be accepted, if prior thereto the company has parted with its title to said land.

22-534

965. The act of April 14, 1896, authorizing the New Orleans-Pacific to relinquish lands within its indemnity limits in favor of settlers, and to select other lands in lieu thereof, is a privilege conferred upon the company which it may exercise at its pleasure, and confers no authority upon the department to dispose of such lands to settlers without the consent of the company.

27-274

966. A settler on land to which the Northern Pacific is entitled may, under the act of July 1, 1898, take other land in lieu of his settlement claim, and if he declines to exercise such privilege the company should then be invited to relinquish such tract and select other land in lieu thereof.

27-357, 466, 469, 545

XIII. Act of June 22, 1874.

See XII HEREOF; WAGON ROAD GRANT.
42-43.

967. Amended by act of August 29, 1890, and circular issued thereunder November 1, 1890.

11-434

968. This act is for the benefit of settlers and in no manner operates to enlarge the grant. 15-62

969. Circular of September 22, 1902, under this and other acts, relative to settlers on railroad and wagon-road grants. 31-424

970. The act and amendatory act of August 29, 1890, relate only to railroad lands settled upon and claimed under the preemption or homestead laws, and do not extend to lands occupied by Indians, not under said laws, but merely in continuance of their ancient right of occupancy or possession. 28-134

971. There is no authority in this or the amendatory act of August 29, 1890, to warrant a relinquishment of land in favor of one not at such time a record claimant or an actual settler. 27-382

972. Neither the act of June 22, 1874, nor the amendatory act of August 29, 1890, authorizes relinquishment by a railroad company, with a view to selection of other lands, in favor of one who has no entry or filing of record or who has not resided upon and improved the land for five years. 39-69

973. Cultivation by one not entitled at such time to initiate a claim does not constitute such person an "actual settler" within the meaning of said act. 29-115

974. And August 29, 1890, while offering inducements to companies to relinquish lands on which filings and entries have been made, leave them at liberty to relinquish or not, as they may think best. 14-695

975. The provisions of the act are remedial and should be construed *in pari materia* with the original grant. 25-77

976. When relinquishment is filed the land is released from all claim of the company and subject to disposal under the general land laws. 6-716; 9-237

977. Relinquishment under, when accepted, is at once operative, and the land covered thereby becomes subject to disposal under the general land laws. 7-481

978. The ability or intention of the settler to perfect his claim does not affect the operation of the relinquishment. 6-716

979. Lands released under said act are held in trust by the Government for the settler. 13-327

980. An entry can not be confirmed under said act if it has not been relieved from conflict with the grant in the manner prescribed. 13-665

981. A relinquishment may be made only where the filing or entry (granted limits) was made under the preemption or homestead law, not of land covered by a timber-culture entry. 2-528

982. The right to a selection depends upon the right to relinquish. 3-459, 504

983. Indemnity not allowed if the settler's claim is superior to that of the company. 1-359

984. Selections in lieu of lands relinquished under the act of June 22, 1874, may be made of lands in either odd or even numbered sections. 35-21

985. For lands relinquished under the act the Gulf & Ship Island Co. is entitled to select lieu lands from the odd or even sections anywhere within the primary or indemnity limits of the unforfeited portion of the grant. 22-560

986. For earned lands relinquished under said act, the company acquires a vested right to select indemnity, anywhere within the limits of the grant, and subsequent legislation, forfeiting the grant to the extent of unconstructed road, will not limit said right of selection to the lands unaffected by the forfeiture. 23-565

987. Lieu selections may be made of either even or odd sections. 2-562

988. Selections under said act can not be made of alternate reserved sections within the primary limits of a grant. (See 18-275.) 15-460

989. Said act intended to confer upon railroad companies the right to select any unappropriated, nonmineral lands, within the limits of their grants, that were subject to entry and disposal under the general land laws at the date of selection, in exchange for lands relinquished under said act. 18-275

990. An entry confirmed under section 1, act of April 21, 1876, excepts the land from the operation of the grant, and consequently affords no basis for a selection under the act of 1874. 27-42

991. A relinquishment confers no right if the land covered thereby was in fact excepted from the grant. 10-264; 33-89 6-611.

992. A selection under said act must be rejected if it appear that the company had no title or right in the tract relinquished. 6-611.

993. An indemnity selection under said act, based on a relinquishment necessary for protection of entrymen, under the rulings then in force as to the date when the rights of the company attached, should not be defeated by a changed ruling as to the attachment of rights under the grant, where the lands so selected have been sold by the company, and the grant is not enlarged by the approval of the selection. 24-381

994. The rights of actual settlers at date of the joint resolution of 1870 were protected; and lands occupying such status do not afford a basis for indemnity selections under the act, as the company had no title thereto. 22-185

995. The act does not authorize a company to relinquish unselected lands within the indemnity limits and to select other lands in lieu thereof. 4-127

996. Selections not authorized on relinquishment of indemnity lands to which the right of the company had not attached. 3-504; 8-472

997. Lands within the indemnity limits of a grant do not afford a basis for relinquishment and selection. 10-50, 609; 15-62; 17-429

998. Recognition by the General Land Office of the right of selection after relinquishment will not preclude departmental consideration of such right when the selection comes up for approval. 6-611, 815; 22-186; 25-248; 27-42

999. Acceptance of relinquishment by the local office does not amount to an approval of the selections based thereon. 8-472

1000. For the purpose of protecting a *bona fide* occupant, a railroad company may waive its right to a selection made under said act and select another tract in lieu of the land first relinquished. 21-455

1001. Where a tract is apparently subject to operation of a railroad grant, but the company treats it as excepted and selects indemnity therefor, the selection may

stand on condition that the company relinquish the basis as provided in said act. 20-401

1002. Though relinquishment may not be authorized, such fact should not affect a prior entry made in good faith. 6-820; 7-81

1003. The right of indemnity does not turn upon the legality or illegality of the entries in question. 3-275, 485

1004. The right of relinquishment and selection is confined to entries made after the rights of the road attach. 3-274

1005. A selection of indemnity involves an absolute and unconditional relinquishment of the basis. 9-72

1006. Selection not entertained prior to relinquishment of basis. 6-661

1007. A selection of lieu lands under said act, invalid for want of a prior formal relinquishment, does not bar an entry. 2-540

1008. A waiver of the company's claim will relieve entries from conflict with the grant, and entitle the company to select lieu lands under said act. 18-549

1009. The company may relinquish, with right to make lieu selection, in a case where, by its own action, it is estopped from claiming the tract in question as against an entryman. 19-227

1010. The designation of a tract as the basis of a selection under said act estops the company from subsequently alleging that its relinquishment, in favor of settlers, did not include the entry embracing said tract. 26-68

1011. Right to select not considered in the absence of application for specific tract. 6-815, 820

1012. A relinquishment of a specified tract (granted limits) properly executed by the company (Hastings & Dakota) must be filed before or concurrently with a lieu selection. 2-540

1013. On relinquishment, indemnity is authorized by said act where settlement was made after withdrawal and filing allowed subsequently to the time when the right of the road attached. 6-292

1014. Settlers upon unsurveyed lands which after survey and upon definite location of the line of the Union Pacific fell within odd-numbered sections within the limits of the grant made to aid in the con-

struction of said road by the act of July 2, 1862, are entitled to three months from date of receipt at the district land office of the approved plat of survey of the township within which to place their claims of record; and where the road was definitely located prior to the expiration of that period, and the settlement claims were subsequently regularly and in due time placed of record and title thereto completed without protest or objection on the part of the company, under which titles the lands have been held for more than 30 years, the company has no claim to the lands involved which upon relinquishment will support the selection of other lands in lieu thereof under the act. (See 33-528.)

33-89

1015. The land (indemnity limits) was located with scrip (agricultural college) after withdrawal and patented; the company (Dubuque & Sioux City) must select it before making relinquishment and lieu selection.

2-542

1016. A relinquishment under said act may not be made of a tract (indemnity limits) prior to its selection; where entry (homestead) is allowed after withdrawal and the tract is selected; if it appears that it is needed to satisfy the grant, relinquishment and lieu selection will be allowed to the company (Hastings & Dakota).

2-527

1017. Whether entry (homestead) allowed after withdrawal but before the State conferred the grant on the company (Hastings & Dakota) gives right of lieu selection: *Quære*.

2-541

1018. Where relinquishment of granted land and lieu selection were made after definite location, but before the road (Northern Pacific) was completed opposite the tracts relinquished, said selection of record barred subsequent claim (additional homestead).

2-530

1019. The right of a qualified settler excludes the land covered thereby from selection under said act.

14-286; 20-82

1020. The right of a prior settler as against a selection is not waived by attempting to secure title to a portion of the land through the company, in event his claim is not recognized by the Government.

20-82

1021. A possessory claim to public land, not asserted under the public land laws, but resting on the prior possession of another, does not appropriate such land as against the right of a railroad company to select the same under said act.

26-628

1022. Lands in Fort Wallace abandoned military reservation not subject to selection under said act.

33-487

1023. "Mineral" in said act can not be construed to mean phosphate deposits, hence lands containing such deposits are not excluded from selection thereunder. (See 25-233.)

19-414

1024. Where a homestead entry is canceled on account of the right of a railroad company to select under said act, and the company fails, after due notice, to perfect its selection within a reasonable time, such failure must be held to work an abandonment of its right, and entitle the entryman, who has continued to reside on the land, to the reinstatement of his entry.

29-650

1025. In accepting the general relinquishment executed by the Union Pacific under the act it was intended to include within its scope claims resting upon occupancy begun prior to, but without the protection of law until after, the filing of the map of general route.

33-528

1026. The act of February 8, 1887, confirming the assignment to the New Orleans Pacific, of the grant made to the New Orleans, Baton Rouge & Vicksburg Co. by the act of March 3, 1871, in excepting from the confirmation all lands occupied by actual settlers at the date of the definite location of the line of road and still remaining in their possession or in possession of their heirs or assigns, did not thereby limit the terms of the grant of 1871, from which there was excepted all lands which had been sold, reserved, or otherwise disposed of by the United States, or to which a preemption or homestead claim may have attached at the time the line of said road was definitely fixed, but merely added a new condition; hence the company has no right of selection under the act of June 22, 1871, in lieu of lands covered by a homestead entry at date of definite location of the line of road, but is relegated to the indemnity provision of

the act of 1871 in supplying any deficiency in its grant occasioned by the disposal of such lands. 33-324

XIV. Act of April 21, 1876.

1027. The protection extended by the act is equally applicable whether the withdrawal is legislative or Executive, on general route or definite location, within granted or indemnity limits. 9-423

1028. The word "withdrawal" in said act refers to withdrawals of lands remaining subject to control by Congress. 28-95

1029. Made necessary by rulings of the department, and is held mandatory. 5-146

1030. The act covered all cases that had not become final prior to its passage. 4-208

1031. The act is remedial and was intended to relieve settlers who, without notice of a withdrawal of lands in aid of a railroad grant, made entries of lands so withdrawn, but should be construed in connection with the granting act, and so applied as not to impute to Congress an intention to defeat vested rights, or to legislate with respect to lands that had passed beyond legislative control. 28-95

1032. Where, prior to said act, the legal title to lands has passed by definite location, such lands are not subject to disposal under said act, in the absence of a forfeiture for breach of a condition subsequent. 28-95

1033. Where prior to said act the legal title to lands had passed to a railroad company, such lands are not subject to the act. 30-490

1034. Filings and entries made in good faith by actual settlers are the only claims confirmed by said act. 9-155

1035. A homestead entry allowed under instructions of the General Land Office, though based on a former entry now held to be illegal, is confirmed by said act. 1-357

1036. Rights of a preemption settler on lands within the limits of a grant, before notice of withdrawal is received at the local office, protected by said act. 9-423

1037. Does not protect a private cash entry made after the map of general route was filed, but before notice thereof was

received, if the entryman was not an actual settler. 9-407; 17-33

1038. A cash entry of lands within withdrawal on general route, made after the map of such route was filed but before notice of withdrawal, is not protected by said act. 9-155

1039. The act protects an entry made after the map of general route (Northern Pacific) was filed, but before notice of withdrawal thereunder. (See 9-155.) 6-6, 223

1040. By the grant to the Northern Pacific a legislative withdrawal took effect upon the filing and acceptance of the map of general route, by which the lands thus withdrawn were taken out of the public domain, as between the company and individuals, irrespective of any notice to the local office. A homestead entry of lands so withdrawn is without effect as against the company, and while, prior to definite location, it may be confirmed by act of Congress, if it is not so confirmed during said period it is ineffective as against the grant on definite location, and thereafter it is not competent for Congress to confirm said entry, in the absence of a breach of condition subsequent, and the said act of 1876 is consequently not applicable thereto. 28-95

1041. Protects a preemption settlement initiated after the map of general route was filed but before notice of withdrawal was received at the local office. 6-223

1042. An entry made within the limits of a grant when the land was subject to appropriation under an order of the department is protected by the act. 6-567

1043. The right to patent under an entry protected by the act depends only on the settler showing due compliance with law and the regulations of the department. 6-567

1044. A preemption claim initiated before notice of withdrawal on general route was received excepts the land from such withdrawal. 8-313

1045. A settlement right, acquired prior to receipt of notice at the local office of the withdrawal, is within section 1. (See 28-126.) 23-6, 435

1046. A desert entry made prior to receipt of notice of withdrawal at the local office, by an actual settler, is protected

under section 1, and operation of the statute is not defeated in such case by the fact that the entry was made after the act. 23-436

1047. A desert entry upon land within the primary limits of a railroad grant, made after definite location of the line of road opposite said land, is not confirmed by section 1, and in no wise affects the attachment of rights under the railroad grant, where the entryman does not claim to have ever been an actual settler upon the land. 30-308

1048. A homestead claim existing prior to receipt of notice of withdrawal excepts the land from the withdrawal. (See 20-191.) 6-21

1049. The confirmatory provisions of section 1 are not limited to entries made prior to the act, but apply with equal force to entries made thereafter. 20-526

1050. Where a tract is not included in a final order of restoration for the reason that the department regards it as in effect already restored, an entry thereof is confirmed by section 1. 1-353, 354

1051. The confirmatory provisions of section 1 can not be invoked except on behalf of one who was an actual settler prior to the time notice of withdrawal was received and has shown due compliance with law. 10-136

1052. The confirmation, by section 1, of a preemption filing, as against a prior withdrawal on general route of the Northern Pacific, is dependent upon compliance with the preemption law and the presentation of proper proofs thereof by the claimant. (See 29-550.) 28-118

1053. The withdrawal on general route of the main line of the Northern Pacific of lands within the common limits of said route and the primary limits of the branch line, as thereafter fixed by definite location, took effect at once, on the filing and approval of the map of said route, and a preemption filing on lands while so withdrawn is without effect, nor is it confirmed by section 1 if the preemptor does not comply with the law and submit proof thereof, and hence will not defeat the attachment of rights under the grant for the branch line on the subsequent location thereof. (See 29-550.) 28-126

1054. The confirmation by section 1, of entries otherwise regular, is not conditional or dependent upon compliance with the preemption or homestead laws, or the presentation of proper proofs of such compliance, but validates them as against the withdrawal and any rights of the grantee company thereunder. 29-550

1055. The confirmatory provisions of section 1 are not applicable where, prior to passage of the act, title has passed by definite location, and been earned by construction of the road. 29-98

1056. Where an entry or filing is confirmed by section 1; as against a withdrawal on definite location, the land covered thereby is excepted from the grant. 29-550

1057. Section 1, providing for the protection of entries made prior to the time notice of withdrawal is received at the local office, has no applicability where rights have theretofore vested under railroad grants, but establishes a new rule subject to the conditions of which such rights shall thereafter attach. 29-655

1058. The act is *in pari materia* with the several railroad land grants, and section 1 has the effect, as to all lands the right to which had not theretofore vested in the grantee company by definite location of the line of road, or other identification of the lands granted, of protecting actual settlers who, prior to the time notice of the withdrawal was received at the local office, made preemption or homestead entries. 29-550

1059. The confirmation under section 1 is solely for the benefit of the individual claimant, conditioned upon compliance with law, and was not intended to confirm the entry absolutely, as against the right of the company, so as to except the land from the grant in favor of any other settler. (See 22-224; 29-550.) 20-191; 23-115

1060. An entry made in good faith by an actual settler before notice of withdrawal is received at the local office, and under which compliance with law is shown, is confirmed by section 1, and the cancellation of such entry prior to said act will not defeat the confirmatory operation thereof. 11-85

1061. Where no withdrawal is directed on filing map of general route and a homestead entry of land within the limits of the grant is made subsequently thereto and prior to definite location, such entry is confirmed by section 1. 13-187

1062. The exercise of the right of purchase conferred by section 2, act of June 15, 1880, is a compliance with the law that brings the homestead entry within the intent and meaning of section 1. 22-264

1063. A homestead entry made prior to receipt of notice of withdrawal on general route, and canceled prior to definite location for failure to submit final proof within the statutory period, but subsequently perfected under section 2, act of June 15, 1880, is within the confirmatory provisions of section 1. 22-264

1064. Land within a withdrawal is subject to entry in the interval between its restoration and the suspension of the order therefor; a subsequent entry of such tract is confirmed by section 1. 1-354

1065. Entry after definite location but prior to withdrawal therefor confirmed by section 1. 1-477

1066. The first section confirms an entry made after the filing of map of definite location but before notice of withdrawal. 5-144

1067. Settlement made after the right of a railroad company had attached but prior to notice of withdrawal is protected by said act. 3-277

1068. The confirmatory operation of section 1 is not defeated by an order of cancellation that becomes final for want of appeal prior to the act, nor by the notation of said order on the records after the passage thereof. 22-224

1069. Action will not be taken under the first section if patent has issued for the land involved. 4-344; 5-144, 205

1070. Section 2 takes effect upon all entries that have not been finally disposed of prior to the act. 4-208

1071. The confirmatory provisions of section 2 are not limited to entries made prior to the act, but are equally applicable to entries made thereafter. (See 28-95.) 22-686

1072. An entry allowed, under the rulings and decisions of the Land Department, of land to which a homestead claim

had attached prior to notice of withdrawal on general route, that remained of record till after definite location, and was then abandoned, is within the confirmatory provisions of section 2 though made after the passage of said act. (See 28-95.) 24-318

1073. The provisions of section 2 are not restricted to persons who made entries under section 1 but apply, in the event of abandonment of such original entrymen, to cases where, "under the decisions and rulings of the Land Department," the lands covered by such original entries have been "reentered by preemption or homestead claimants who have complied with the laws governing preemption and homestead entries," and submitted satisfactory proof of such compliance. 24-119

1074. Entry reinstated and held to be confirmed by section 2 of said act though application for repayment had been made after cancellation. 1-387

1075. Section 2 of April 21, 1876: Three facts prerequisite to title thereunder, viz: (1) A valid claim existing at date of withdrawal; (2) reentry under decisions and rulings of Land Department; (3) final proof must show full compliance with law. 2-560

1076. Settlement and filing protected by section 3, as well as an entry. 1-333

1077. A desert entry is not within the confirmatory provisions of section 3. 13-665

1078. The third section of this act is not unconstitutional, as it only protects entries made at a time when Congress might have properly declared a forfeiture for breach of condition subsequent. 6-427

1079. Under the third section an entry should not be rejected because of a prior withdrawal if at the time of such entry the grant had expired. 6-427

1080. The clause "at a time subsequent to the expiration of such grant," in section 3, refers to the dates fixed for completion of the roads, and not to the date when forfeiture might be declared. 1-333; 6-427; 7-223

1081. The third section confirms entries made within the limits of a grant after its expiration. 7-223

1082. The status of land entered under the third section is not altered by a legislative revival of the grant. 6-427

1083. Section 3 does not include an entry made after the grant has expired where the grant is revived and the road constructed in accordance with the reviving act prior to the act of 1876. 10-306

1084. In the absence of an entry made under permission of the Land Department the protection accorded by section 3 is not applicable. 9-246

1085. Section 3, act of April 21, 1876: Entry (homestead) was made within the conflicting limits of the Coosa & Tennessee and the Wills Valley portion of the Alabama & Chattanooga railroads; no portion of the former road has been completed, and the entry was made after expiration of the time for completing the latter road and prior to the extension granted by act April 10, 1869; held that it is confirmed. 2-500

XV. Adjustment.

(a) Generally.

(b) Act of July 1, 1898.

(a) Generally.

See III HEREOF.

1086. Should be adjusted without delay under act of March 3, 1887. 6-144

1087. The adjustment act of March 3, 1887, contemplates the final adjustment and formal closing of railroad grants. 17-437, 589

1088. A formal declaration of adjustment not necessarily nullified by subsequent approval of tracts found to be within the grant. 10-610

1089. Departmental declaration of final adjustment will not be disturbed on the allegation that a tract was erroneously patented under the grant. 10-610; 17-437, 589

1090. A statement furnished by the General Land Office as to the condition of a grant with respect to its adjustment can not be regarded as the final adjustment contemplated by the act of March 3, 1887, where subsequent selections are certified and others remain unadjudicated. 18-270

1091. A railroad company will not be heard to say that by a certain decision the grant was finally adjusted where subse-

quently thereto the company files additional lists of selections. 21-162

1092. A grant can not be regarded as adjusted until it has been finally determined what lands the company is entitled to, both in the granted and indemnity limits. 21-49

1093. So long as a railroad company is able to specify satisfactory bases for indemnity selections it can not be held to have acquired lands in excess of its grant. 21-462

1094. Adjustment under the act of March 3, 1887. Opinion of Attorney General as to construction of sections 3, 4, and 5. 6-272

1095. Circular of November 22, 1887, under act March 3, 1887. 6-276, 544

1096. Directions given for adjustment of the grant to the Cedar Rapids & Missouri River Railroad Co., made by the acts of May 15, 1856, and June 2, 1864. 29-79

1097. The Secretary of the Interior is charged with the adjustment of railroad grants, and should withhold from other disposition lands granted for such purpose, even though the grantee may fail to appeal from an erroneous adverse decision of the General Land Office. 22-515

1098. A decision of the department, in accordance with the rulings then in force, that a certain tract of land passed under a grant does not, in view of the act of March 3, 1887, requiring the adjustment of railroad grants "in accordance with the decisions of the Supreme Court," preclude subsequent departmental action, on the application of a third party, under later decisions of said court. 24-441

1099. Further approvals on account of a grant will not be made where the adjustment shows that the certifications already made are in excess of the amount granted. 16-442

1100. The construction of a grant adopted and followed for many years in its adjustment becomes a rule of property and should not be changed. 8-255

1101. The beneficiary under a grant to a State is entitled to be heard on questions of adjustment. 10-684; 13-464

1102. The right of a railroad company to a specific tract should not be determined by an adverse *ex parte* showing

and the testimony taken in another and independent case involving a different tract. 22-622

1103. In the adjustment of, the department can not depart from statutory authority to protect the rights of parties claiming under the company. 11-607

1104. The certificate of the governor provided for in section 4, act of June 3, 1856, is limited to the fact of completion and does not extend to conclusions of law. 12-117

1105. Directions for the adjustment of selections and settlement claims on revocation of withdrawal. 6-84

1106. The revocation of certain indemnity withdrawals under the rule of May 23, 1887, was not intended to suspend adjustment of the grants. 6-144

1107. Adjustment deferred pending congressional action (Florida Railway & Navigation Co.). 2-561; 5-107

1108. Inasmuch as no action has been taken toward forfeiture of the grant made by the act of May 17, 1856, and the State (Florida) has recognized the rights of the company thereunder, the department must proceed with the adjustment, though the road was not constructed within the time fixed therefor. 16-217; 17-6

1109. Lands within the primary limits of a grant and subject thereto, but erroneously certified to another grant, must be charged to the first on the adjustment thereof. 6-196; 21-49

1110. A railroad company succeeding to the rights and benefits conferred upon another takes the same subject to the conditions and limitations imposed upon its predecessor. 6-130

1111. Rights of a company claiming as assignee, having been determined in the courts, will be recognized by the department. 5-81

1112. The amendatory act enlarging the grant (Minnesota) subject to the limitations in the original grant takes effect by relation as of date of the original grant against the United States only, and the enlarged grant is subject to all reservations by way of preemption, homestead, or other lawful claims. 2-510

1113. Under the provisions of the Minnesota State law it is competent for the stockholders of a company, after a decree

of dissolution, to execute a deed conveying all interest in its land grant to a trustee, for the purpose of closing up the affairs of said company and settling the claims of creditors and stockholders, and the power so conveyed survives the existence of the company (Hastings and Dakota). 18-511

1114. Lands not earned by the construction of a fractional part of a 10-mile section. 6-47, 54

1115. Lands patented on the governor's certificate under the act of May 12, 1864, for constructed road were earned though the whole line of road was not completed. 6-54

1116. No authority for the issuance of patents without governor's certificate except on final completion of the road (Sioux City & St. Paul Railroad). 6-47, 54

1117. Certification of lands within the common limits of a completed road and one not constructed will not be made until the State (the grantee in trust) indicates the lands belonging properly to the constructed road. 1-343, 376

1118. In the adjustment of the Ontonagon and Brulé River grant under the act of forfeiture the company is only entitled to lands for the portion of road constructed for the purpose of being used and maintained as a railroad. 9-227

1119. The Ontonagon & Brulé Co. having constructed 20 miles of its road, is entitled under the act of forfeiture to the lands earned thereby if that quantity of land can be found within the limits prescribed by said act. 13-464

1120. Title should be conferred for lands earned by construction prior to the expiration of the grant. 1-373

1121. Acceptance of the constructed road, adjustment of the grant, and issuance of patents, finally dispose of any question as to the construction of the road on the line of definite location. 6-54

1122. The road as located and constructed is the object and measure of the grant, and with the road thus fixed lines drawn perpendicularly to it at each end determine the final limits of the grant. 6-195

1123. Lateral limits determined by the line of definite location. 6-565

1124. The lateral limits of a grant are determined by drawing lines on each side of the route of the road through a series of points at the precise distance therefrom of the width of the grant on tangential lines to arcs having a radius equal to the width of the grant on each side of the route. 5-468, 551

1125. In constructing a diagram showing the limits of a grant, some tracts are necessarily included that are more than the designated distance from the line of road if the measurement is made to a point directly opposite such tracts, but are within said distance from some other point on the line. 15-35

1126. The approved plat on file in the General Land Office, on which the limits are marked, must determine whether a selection falls within the limits of the grant. 25-468

1127. A diagram showing the limits, prepared concurrent with the filing of the map of definite location, and upon which withdrawal is ordered, will not be disturbed after the withdrawal has stood unquestioned for years and rights have vested thereunder. 13-572

1128. The limits as shown on a diagram recognized for a long term of years by the General Land Office, and upon which the grant has been practically adjusted, will not be disturbed. 22-227

1129. The lateral limits of the grant as fixed by the original withdrawals should not be readjusted with the view to recovering title to lands patented to the Missouri, Kansas & Texas Co. that may thus be shown to lie outside of its grant, as (1) the title to said lands has passed out of the company, (2) the original withdrawals must be presumed to have been made after due consideration, and (3) said withdrawals have stood unquestioned for many years and titles vested thereunder. 11-130

1130. The lateral limits of the grant to the Southern Pacific should be adjusted on the line of location, but where the constructed road has been adopted as the basis of adjustment the limits thus established will not be changed. 14-264

1131. The right to fix the terminus, if once exercised, is exhausted, and the company thereafter has no authority to es-

tablish another place as the initial point of its road. 4-458; 6-195; 21-412

1132. The authority of the Northern Pacific to fix the initial point of its road on Lake Superior can only be exercised subject to approval of the department. 21-412

1133. The acceptance of the constructed road to Ashland, Wis., east of Superior City, can not be set up by the Northern Pacific as an adjudication of its terminal right, and that such question is therefore *res judicata*, for the only power to fix said terminal was exhausted when the road made its previous connection with Lake Superior, as contemplated by the grant, and no act of the Executive thereafter, in approval of another terminal point, could confer any right in such matter. 21-412

1134. The right of the Northern Pacific to form a connection with Lake Superior as its eastern terminus could be exercised either through actual construction, or through association with some other company, and by the latter course said company, through an apparent consolidation, secured such terminus, and thereby exhausted its right to fix the eastern terminal point of its road, if such consolidation was in fact effected. But if such consolidation was not such an association as contemplated by the grant, then the eastern terminus of the grant is at Superior City, Wis., the first point at which said company, by its own road, reached Lake Superior. 21-412

1135. The arrangement between the Northern Pacific and the Lake Superior and Mississippi companies with respect to the latter company's line of road from Thomson to Duluth, was such a consolidation as was contemplated by the grant to the former company, by which said company effected its connection with Lake Superior and thereby fixed the eastern terminus of its grant at Duluth. 23-204

1136. In adjustment of the grant to the Northern Pacific between Thomson and Duluth the land covered by the prior grant to the Lake Superior company must be deducted, so that between said points the Northern Pacific will take only the granted lands within the lateral limits of its own grant, which fall outside the limits of the former grant, and will be entitled to in-

demnity only for losses sustained outside the limits of the former grant. 23-204

1137. In adjustment of the Northern Pacific grant between Thomson and Duluth said grant should be charged with all lands received by the Lake Superior & Mississippi company between said points under the prior grant thereto, whether within the primary or indemnity limits of said grant. 24-320

1138. The authority to fix the lateral and terminal limits of a railroad grant rests entirely with the Land Department. 19-148

1139. The authority conferred upon the governor of a State to certify to the completion of the constructed sections of the road does not empower such officer to fix the terminals of the grant during the construction of the road, or on its completion. 19-148

1140. The order allowing amendment of the terminal limit of the withdrawal on definite location of Northern Pacific revoked. 3-478

1141. The fixing of a terminal limit is a matter of mathematical ascertainment, and if a correction is necessary to truly represent the grant on either side of the road such correction may be made in the General Land Office. 3-450, 478

1142. In fixing the terminal limits of a constructed road the line of such road, with its sinuosities, is measured backward from the end for the distance of the statutory section, and from that point the general course of the road to its end is taken, and the terminal line drawn at right angles or perpendicular thereto. 19-148

1143. In establishing the terminals separating the granted lands from those forfeited the lines should be run at right angles to the general course of the last 25 miles of the road (Northern Pacific). 11-625

1144. The line fixing the terminal limit of the Northern Pacific should be run at right angles to the general course of the last section. 5-459

1145. The terminal line of the Northern Pacific grant at Duluth must be fixed at right angles to the last section of 25 miles of the road. 23-428

1146. All selections by the Northern Pacific of lands east of the terminus established at Duluth should be canceled. 23-428

1147. Instructions with respect to the establishment of a terminal line near Portland, Oreg., in accordance with departmental decision in *Spaulding v. Northern Pacific Railroad Company*, and also as to a proposed change in the lateral limits of the grant along the constructed road north of said city. 21-435

1148. The joint resolution of May 31, 1870, designated Portland as the point of connection between the branch line provided for in the grant of 1864, and the extension to Puget Sound authorized by said joint resolution, and it follows, that in the establishment of a terminal line between the lands granted by said joint resolution, and those of a prior grant forfeited by the act of September 29, 1890, said line should be drawn through Portland. 13-70

1149. By the act of forfeiture, March 2, 1889, the line of constructed road furnishes the measure of the grant and the basis of the terminal lines, and said lines must be drawn at right angles with said basis. 13-464

1150. In the execution of the forfeiture act of March 2, 1889, the western terminal line separating the lands opposite the unconstructed portion of the Marquette, Houghton & Ontonagon road from those opposite the constructed portion thereof must be drawn at right angles to the line of constructed road. 12-214

1151. The provisions of the act of 1871 authorizing the Houghton & Ontonagon company to make a new location of the unconstructed portion of its road, on condition that the company should be entitled to receive "only its complement of lands for each mile of road constructed and completed . . . within the limits heretofore assigned to said line of road," do not require the Land Department to disregard the constructed road as the measure of the grant, and fix the terminal limit of the grant on the basis of the old location. 19-148

1152. The proviso to the act of March 3, 1875, which authorized the Wisconsin

Central to straighten its road between Portage City and Stevens Point provides that no land shall pass to the company, under its grant, south of Stevens Point which may be outside of the 10-mile limits measured from the modified line; and to determine what lands should be thus excluded can only be ascertained by continuing the terminal heretofore established at Stevens Point until it meets the 20-mile limits of the grant as originally established. 19-254

1153. Selections not allowed beyond the terminal limits as defined by a line drawn at right angles with the general route of the road at such terminus. 1-394

1154. An incorrect terminal limit can not be recognized on the ground that the company has adopted the same in specifying losses under its indemnity selections, where it appears that such limit has never received the sanction of the General Land Office or the department. 18-22

1155. The words "point of junction," as used in, designate the place where two lines of railway meet. 5-549

1156. Made for construction of a road from Portland to Astoria and from a point of junction near Forest Grove to McMinnville was in effect a grant for construction of two roads (Oregon Central). 5-549

1157. By act of March 3, 1869, the grant in aid of the Denver Pacific was separated from that made for the Kansas Pacific, and said grants must therefore be adjusted separately. 6-385, 581

1158. In the partition of lands within the overlapping limits of the grants to the Union Pacific and the Kansas Pacific, the companies alone were parties thereto, and each must look to its grant within said limits as the source of its title, and not to the award under said partition. (See 23-161.) 22-291

1159. The grant to Minnesota in aid of a road "from Stillwater, with a branch by St. Cloud and Crow Wing," is in effect an entirety and indivisible (St. Paul, Minneapolis & Manitoba Railway). (See 13-354; 32-21.) 8-255

1160. For the purposes of boundary and patent the Northern Pacific road is divided into sections of 25 miles. 5-459

1161. To the Northern Pacific, between Portland and Tacoma, was made by the joint resolution of May 31, 1870. 6-400, 409; 16-488

1162. The joint resolution of May 31, 1870, was in the nature of a new grant, and only such lands as were in a condition to pass under the terms of the grant to the company, at the date of said resolution, were intended to be granted thereby. (See 26-652; 29-224.) 23-265, 445

1163. The joint resolution of May 31, 1870, while making a new grant to the Northern Pacific between Portland and Puget Sound, and enlarging the limits along the Cascade branch within which indemnity might be taken, did not make a new grant for said branch; hence, as to lands within the place limits along said line their status under the grant of July 2, 1864, must determine the right of the company thereto. 26-652; 29-224

1164. The grant to the Northern Pacific by the act of July 2, 1864, and the grant to the same company by the joint resolution of May 31, 1870, must be adjusted separately. 25-511

1165. The Northern Pacific Railway Co. is the lawful successor of the Northern Pacific Railroad Co. and entitled to all the rights of the latter company in the administration and adjustment of the grant made by the act of July 2, 1864, and acts amendatory thereof and supplemental thereto. 29-387; 33-634; 34-105; 36-369; 38-378

1166. Under section 6, act of September 29, 1890, the Northern Pacific should be required to elect as to alternate odd-numbered sections it will take in satisfaction of the moiety for its constructed branch line where the limits of such line overlap the limits of the forfeited main line, and the remaining odd sections be restored to the public domain. 11-625

1167. By the terms of section 6, act of September 29, 1890, lands within the forfeited limits of the Northern Pacific main line, not subject to selection on behalf of the branch line prior to said act are thereafter not open to such appropriation. 19-281

1168. The Northern Pacific permitted to amend its selections of moiety lands retained on account of the constructed

branch line within the common limits of the main and branch lines and opposite the unconstructed portion of the main line, the grant for which was forfeited by act of September 29, 1890. 16-504

1169. Plan of adjustment adopted in the matter of settlement claims in conflict with the Northern Pacific grant on northern boundary of former Sisseton and Wahpeton Sioux "Indian country." 5-670

1170. The grants to the St. Paul & Northern Pacific Railroad Co. and the Northern Pacific Railroad Co. were made by different acts of Congress, are entirely separate and distinct, and the lease of its road and franchises by the former company to the latter will not justify the department in holding that rights granted to the company first named can only be exercised by its lessee. 24-339

1171. Congressional action attaching a further condition to a grant (Pacific roads), requiring payment for survey and selection, prior to the vesting of title, is upheld by the Supreme Court. 2-670

1172. Failure of the company (Northern Pacific) to pay for the survey raises only a question as to delivery of title. 5-343

1173. Though survey of the land within specified limits may be directed by the grant, there is no authority therefor in the absence of an appropriation to cover the expense (Atlantic & Pacific). 6-84

1174. There is no authority in the department to accept or use a deposit advanced by the company to cover the cost of a survey for identification of lands subject to the grant (Atlantic & Pacific). 6-84

1175. In all cases where made directly to a company, or to a State in trust for a designated company, the cost of surveying and conveying the lands so granted must be paid into the United States Treasury before said lands are conveyed to such company. 20-22

1176. Under the joint resolution of April 10, 1869, the Central Pacific became entitled to the granted lands between Ogden and Promontory Summit. 5-661; 26-57

1177. The act of June 20, 1874, was passed in the interest of commerce and

transportation and did not affect the grant of lands to the Union Pacific. 6-385

1178. The status of certain lands selected by the Western Pacific opposite the first completed section. 5-277

1179. The phrase "sold or disposed of" in section 3, act of July 1, 1862, construed (Sioux City & Pacific). 1-345

1180. The Central Pacific assigned to the Western Pacific the right to construct the road between San Jose and Sacramento, and Congress ratified the assignment March 3, 1865; the lands involved are held under the terms of the original act and not as of date of said ratification. 2-479

1181. Failure of the Leavenworth, Pawnee & Western Co. to signify under seal its acceptance of the provisions of the act of July 1, 1862, does not defeat the right to patents thereunder (Union Pacific). 11-108

1182. The act March 3, 1869, authorizing the Union Pacific, eastern division, to contract with the Denver Pacific for construction of that part of its railroad between Denver and its point of connection with the Union Pacific, is recognized as authority for consolidation of said lines of road. 20-466

1183. Directions given for the issuance of patents to the Union Pacific for lands in Kansas. 11-108

1184. In estimating deductions on account of prior grants in accordance with section 3, act of March 3, 1865, the St. Paul & Sioux City grant is not to be included within the grants increased by the act of 1865, as special provision is made for said road by section 7, act of May 12, 1864. 13-349

1185. As the company (St. Paul & Pacific) did not accept the conditions imposed by the act of June 22, 1874, said act did not become effective as against the company or confer any rights upon settlers prior thereto. 5-145; 9-246

1186. The act of June 22, 1874, extending the time for completion of the St. Paul, Minneapolis & Manitoba road, and protecting the rights of actual settlers at the date of said act, required the company to file its acceptance of the terms imposed thereby, but the protective provisions for the benefit of settlers are not

dependent upon the company's acceptance of the act. 18-101

1187. The certification of lands prior to the act of June 22, 1874, in nowise affects the right of an actual settler protected thereby, nor does it embarrass the department in extending to such settler the protection of said act. (St. Paul, Minneapolis & Manitoba Railroad.) 18-101

1188. The grant is properly charged with lands relinquished by the governor under the State act of March 1, 1877, though the title thereto does not pass to the company (St. Paul, Minneapolis & Manitoba). 13-349

1189. The grant in aid of the St. Paul & Pacific under act of March 3, 1857, was adjusted along the main line as far west as range 38 in 1863; the lands to which the company was entitled were certified to it, and those not needed to satisfy the grant were restored to market by public offering under proclamation No. 700, dated April 18, 1864, and the offering was made September 5, 1864. 2-502

1190. Lands certified as indemnity under the grant of March 3, 1857, but falling within the granted limits as extended by the act of March 3, 1865, must be reckoned in the adjustment as granted lands. If not subject to selection, as indemnity, when certified, not in a condition to pass at the time of the passage of the act of 1865, the company can have no rightful claim thereto. 18-87

1191. Both in the title and body of the acts of 1856 and 1864 the terms "land" and "public land" are used interchangeably (Wisconsin). 6-195

1192. Hudson held as the terminus of the Omaha road; construction beyond that point confers no right (Wisconsin). 6-195

1193. The grant of June 3, 1856, is not repealed by act of May 5, 1864, except to the extent that the latter act destroys the continuity of the line provided for or made possible under the former grant (Wisconsin Central). 10-63

1194. Application for suspension of proceedings under the decision of January 24, 1890, in the Wisconsin Central case denied. 11-615

1195. The grant to the Oregon Central was not limited to lands in the State of Oregon. 6-292, 677

1196. The deduction required from the lands granted by the act of July 27, 1866, in so far as the road located thereunder was upon the same line as that provided for in the grant of 1852, should be made from the aggregate amount of the later grant (Atlantic and Pacific). 8-165

1197. The New Orleans, Baton Rouge & Vicksburg company, as mortgagees or bondholders, have no standing in the department to object to the issuance of patents to the New Orleans & Pacific if the latter company has complied with the act of 1887. 8-25

1198. The grant to the New Orleans & Pacific took effect when the Secretary of the Interior was notified that the company had accepted the provisions of February 8, 1887, and attendant obligations. 8-25

1199. The department must issue patents to the New Orleans & Pacific whenever due compliance is shown with the act of February 8, 1887. 5-593

1200. Instructions under the act of February 8, 1887, with respect to the New Orleans & Pacific, claiming under the grant to the New Orleans, Baton Rouge & Vicksburg company. 5-686

1201. The effect to be given the Blanchard-Robertson agreement by section 4, act of February 8, 1887, is the right to purchase from the company lands that are confirmed to it by said act and were occupied by actual settlers December 1, 1884. 13-157

1202. Under the agreement filed by the New Orleans & Pacific the company will be called upon to restore title where it has received patent for lands in possession of actual settlers at definite location. 15-576

1203. All pending appeals of the New Orleans & Pacific from decisions of the General Land Office in which settlement rights at definite location are recognized, dismissed under an agreement filed by said company. 15-576

1204. Directions given for issuance of patent on clear list No. 8 for lands in primary limits of the New Orleans & Pacific. 15-576

1205. By the joint resolution of June 28, 1870, the Southern Pacific was authorized to construct its road along the route indicated by the map of January 3, 1867, and entitled to have the road accepted, if so constructed, but the acceptance of said road will not determine conflicting rights or claims within the grant. 25-223

1206. The report of the commissioners as to the construction of the Southern Pacific Railroad, as provided for in said joint resolution, must be made to the Secretary of the Interior, and does not require the approval of the President. 25-223

1207. A lease of a portion of the constructed road of the Southern Pacific to the Atlantic & Pacific can not be accepted as a valid basis for a claim on the part of the latter company that it has, under sections 3 and 17, act of July 27, 1866, thereby earned its grant opposite said constructed road. 25-223

1208. The map of January 3, 1867, was not filed as a map of definite location, but rather as a map of general route, and a deflection from said route, in the construction of the road, made necessary on account of engineering difficulties, and to secure a more feasible route, does not warrant the rejection of the road thus constructed (Southern Pacific). 25-223

1209. Action suspended on the location under the forfeiture act of the western terminal line of the grant in aid of the Marquette, Houghton & Ontonagon Railroad Co. 11-466

1210. The line of constructed road is made the measure of the grant provided for in the act of April 20, 1871 (Marquette, Houghton & Ontonagon company). 12-214

1211. In the grant of April 20, 1871, the coterminous principle is recognized in determining the measure of the grant and the "line of road as completed" forms the basis of measurement. 12-214

1212. The determination in the case of the Ontonagon road that the company is entitled to the amount of land measured by the constructed road, without regard to whether said road was in operation, will not govern in cases arising under the general forfeiture act. 13-464

1213. The claim that the Ontonagon company is entitled to 120 sections of land for the location of its entire line in addi-

tion to that quantity earned by actual construction can not be recognized either under the terms of the grant, the act of forfeiture, or the ruling of the Supreme Court in the Courtright case. 13-464

1214. Section 4 of the forfeiture act of March 2, 1889, expressly provides that said act shall in no way enlarge the original grant. 13-464

1215. Adjustment of the grant to Bay de Noquet and Marquett road and instructions thereunder. 15-312

1216. The act of July 2, 1864, for the benefit of the Burlington & Missouri River Railroad in Nebraska contemplated that one-half of the land granted should be taken on each side of the road, and did not authorize enlarging the quantity on one side to make up for deficiencies on the other. 6-589

1217. The lands taken in excess on the north side of the line (Burlington & Missouri River in Nebraska) may be identified by adjusting the grant so that the company will receive nowhere along the line lands to the north of a line parallel with the line of the road, south of which any lands subject to the grant may remain unselected. 6-589

1218. The Burlington & Missouri River Railroad in Nebraska is entitled to lands for the length of the original line to a point where it will meet a line drawn on the plat perpendicular to it from the present terminus at Kearney. 6-589

1219. In adjustment of the grant (Burlington & Missouri River in Nebraska) under the joint resolution of 1870 the length of the line must be computed on the definite location made prior to passage of said resolution. 6-589

1220. The lands on the south side of the Burlington & Missouri road, where the grant is deficient, that were subject to the grant at definite location, are not open to entry, but must remain in reservation, subject to such action as may be required on the termination of the judicial proceedings now pending with respect to the excess of lands received by said company on the north side of its road. 20-496; 25-38

1221. To the State of Iowa by the acts of May 15, 1856, and June 2, 1864, is a grant in place, the extent of which is de-

terminated by the location under the original grant, and the amount of lands earned thereunder ascertained by the road constructed west of Cedar Rapids, with the additional right to satisfy deficiencies by resorting to even-numbered sections within the 6-mile limits, and both even and odd within the 15-mile limits, and if there is still a deficiency to resort to the even and odd sections along the modified line within 20 miles thereof. (See 29-79.)

23-79

1222. The act of June 2, 1864, authorized a modification of the line of unconstructed road as located under the original grant of 1856, and provided for a branch line connecting said modified line with the line of the Mississippi & Missouri Railroad Co., so as to form a connection with the Union Pacific system. For the modified main line the company was entitled "to the same lands and to the same amount of lands per mile" as provided in the original grant, but for the connecting branch line a new grant was made, to be satisfied from lands within 20 miles thereof; hence in the adjustment of the grant, as made by the two acts of Congress, the "connecting branch line" can not be regarded as a part of the modified main line. (See 29-79.)

24-125

1223. The act of June 2, 1864, so far as the modified main line is concerned, enlarged the source from which the amount of lands granted by the act of 1856 might be satisfied; but the lands certified prior to said act of 1864, along unconstructed road, must remain a charge against the company in the final adjustment of the grant under the two acts. (See 29-79.)

24-125

1224. On the adjustment of the grant made by act of May 15, 1856, it is not material whether the line as originally located, or the modified line as authorized by act of June 2, 1864, is taken as the measure of the grant, as the difference between the two is but small, and the grant is largely deficient under either line.

25-440

1225. Instructions given for determining what lands are subject to the Mobile & Girard grant and for the presentation

of claims that are protected by the forfeiture act of 1890. 12-118

1226. Section 8, act of September 29, 1890, is a limitation on the grant made to the Mobile & Girard company by the act of June 3, 1856, and restricts said grant to the lands earned by the construction of the road from Girard to Troy. 12-117

1227. Instructions with respect to adjustment of grant to Mobile & Girard company under act of September 29, 1890. 16-70

1228. Directions given for adjustment of the Mobile & Girard and submission of a list in proper form for certification in full satisfaction of the grant. 16-355

1229. The Gulf & Ship Island road required to indicate the exact point where its line will cross the New Orleans & Northeastern road. 11-625

1230. The right to sell lands on account of preliminary work and for constructed road provided for in section 4, act of August 11, 1856, is limited to the number of acres contained in the designated sections within the 20 miles specified therein (Gulf & Ship Island). 16-236

1231. The measure of a grant in its adjustment under the forfeiture act of September 29, 1890, is the granted land that lies opposite to and coterminous with the completed portion of the road (Gulf & Ship Island). 16-236

1232. The quota of lands to aid in the construction of the Alabama & Chattanooga road in the common limits of other grants having been satisfied, the remaining lands in such limits appertain to the other roads, and, being opposite the unconstructed portion of said roads, are restored to the public domain by the forfeiture act of September 29, 1890. 16-442

1233. The State (Alabama) is entitled to have certification of certain lands granted June 3, 1856, lying within the intersecting lines of a completed and an uncompleted road, for the purpose of identification, leaving questions of reversionary right to Congress. 2-475

1234. The revival of the grant of June 3, 1856, was made subject to the conditions originally imposed (South & North Alabama). 15-390

1235. The revival of the grant in aid of the Alabama & Chattanooga did not re-

lieve it from the limitations originally provided for the disposition of the granted lands. 1-345

1236. The State (Alabama) as trustee must determine what lands the company shall receive in case of conflicting limits and where one road is not constructed, and the department has no authority to direct the State in such matter. 1-345, 374

1237. The number of roads provided for in the grant of June 3, 1856 (Alabama), being considered, it is held that said grant contemplated a road from Gadsden through the Chattooga Valley to the Georgia and Tennessee line. (See 17-170.) 8-33

1238. The construction of a fractional part of a section of 20 miles, the whole road not being completed, does not entitle the company (Tennessee & Coosa) to any lands under the grant of June 3, 1856. 12-254

1239. The failure to construct any part of the Tennessee & Coosa road in accordance with the grant renders it subject to the forfeiture act of 1890, not only as to the uncertified lands, but also as to the 120 sections certified in advance of construction, if such lands remain in possession of the State or company. 12-254

1240. Lands having been certified under the act of June 3, 1856, on account of the Wills Valley grant, in excess of the amount granted, and suit having been instituted to recover such excess, no further certifications of lands will be made under said grant, even though they are of the prescribed number within the place limits and free from adverse claims or rights at the date of the definite location of said road. Where such lands have been sold, however, as a part of the grant and before the ascertainment of such excess, it must be held that the equity of the purchaser is superior to the right of the United States to retain said lands on account of the excess in certifications; and by way of assurance to the purchaser's title under the railroad grant, his purchase of the lands under the provisions of section 5 of the act of March 3, 1887, may be permitted to stand. 32-113

1241. Adverse claims asserted to these lands under the homestead and preemp-

tion laws denied, for the reasons (1) that although the department has found that an excess exists in approvals made on account of the Wills Valley grant, the question is pending in the courts, and the granted sections within the place limits not certified on account of the grant have never been restored to entry; (2) that the settlements alleged to have been made in 1882 were not because of any decision of this department holding the lands in question excepted from the grant and subject to settlement; (3) that upon the facts shown it would seem that the United States is without jurisdiction to entertain claims thereto under the settlement laws; and (4) that even should these lands be held excepted from the Wills Valley grant and subject to the provisions of the act of 1887, the showing made in support of claims asserted thereto under the settlement laws is not sufficient to defeat the right of purchase under the fifth section of the act. 32-113

1242. The act of July 28, 1866, reviving the grant of February 9, 1853, was not a new donation of lands within the limits of the original grant, but a waiver of the terms of reversion contained in said grant. (St. Louis, Iron Mountain & Southern.) 11-157

1243. Departmental action for the recovery of lands within the New York Indian Reservation patented to the Missouri, Kansas & Texas company under the grant of 1863 and acts amendatory thereof precluded by executive and congressional action based on the opinion (acquiesced in by the Indians) that said reservation had ceased to exist. 11-130

(b) Act of July 1, 1898.

1244. Circular under the act of July 1, 1898, for adjustment of claims in conflict with the Northern Pacific grant. 28-103, 470

1245. Regulations of June 15, 1901, under act of March 2, 1901, extending provisions of act of July 1, 1898, to certain claims to lands within the indemnity limits of the Northern Pacific grant. 30-620

1246. All claims in conflict with the grant, coming within the provisions of the

act, which remained unpatented at the date of the passage thereof, should be adjusted in accordance with its terms.

28-470

1247. The act contemplates that the right of lieu selection shall be exercised by the company; and the presentation of such a selection by a successful contestant is not a proper exercise of his preference right of entry.

38-291

1248. Where any part of a settlement claim is in conflict with the claim of the company under its grant, and otherwise subject to adjustment under the act, the settler may relinquish his entire claim and transfer the same to other lands.

35-457

1249. Regulations of February 14, 1899, under the act, so modified as to recognize the Northern Pacific Railway Co. as the lawful successor in interest as to all lands within the limits of the grant to the Northern Pacific Railroad Co.

29-316

1250. The Northern Pacific Railway Co. is the lawful successor in interest to the land-grant rights of the Northern Pacific Railroad Co.

29-387;

33-634; 34-105; 36-369; 38-378

1251. Where a showing is made sufficient to exempt the company from relinquishing the tract, the individual claimant who has theretofore elected to hold said tracts, should be advised of such showing, that he will be given another opportunity to relinquish his claim and take other lands, and that in the absence of such action on his part the contest will proceed to decision in the usual way.

29-316

1252. Directions given that in case a selection by the company is canceled for conflict, and thereafter, in the adjustment of the conflicting claims under the act of July 1, 1898, the individual claim is canceled upon relinquishment, the selection of the company be immediately reinstated.

34-364

1253. Lands classified as mineral under the act of February 26, 1895, are not subject to selection by the company under the act of July 1, 1898.

34-661

1254. Lands within the former Siletz Indian Reservation and opened by the act of August 15, 1894, are not subject to selection by the company under the act of July 1, 1898.

38-46

1255. A claim resting upon a mere application to enter or purchase which had not been finally disposed of on January 1, 1898, and not based upon a preceding settlement, is not within the class of claims subject to adjustment under the act.

33-426

1256. A claim resting upon a rejected application to make homestead entry, and not upon settlement, entry, or purchase, is not within the provisions of the act or the regulations thereunder.

28-124,

126; 29-242

1257. An application to purchase under the act of June 3, 1878, presented prior to, but upon which proof and payment were not made until after January 1, 1898, does not present a claim for adjustment under the act.

34-105

1258. Where an applicant to purchase under the act of June 3, 1878, is allowed to make proof and payment in violation of an order withdrawing the land from entry, no claim is thereby initiated falling within the remedial provisions of the act of July 1, 1898.

34-105

1259. A mere application to purchase under the timber and stone act, rejected prior to January 1, 1898, because in conflict with an unapproved indemnity selection by the company, but pending on appeal on that date, does not present a claim for adjustment under the act.

37-394

1260. Where prior to May 31, 1905, a timber and stone applicant submitted satisfactory proof and tendered the proper fees and purchase price, but upon which entry was withheld, not on account of any defect in the proof, but solely to await investigation by a special agent under general instructions with respect to timber and stone proofs in cases where the witnesses were not cross-examined by special agent, the claim of the applicant will be regarded as an entry within the purview of the act of July 1, 1898, as extended by the act of May 17, 1906, and as subject to adjustment under said acts.

37-604

1261. Conflicting claims to lands excepted from the grant to the Northern Pacific by reason of a withdrawal made prior to the grant are not subject to adjustment under the provisions of the act.

30-662

1262. An attempted selection subsequent to January 1, 1898, does not pre-

sent a claim for adjustment under the act, for the reason that the claims of the company are limited to those which are claimed to have attached by definite location or selection prior to January 1, 1898.

30-16

1263. Selections by the Northern Pacific Railroad Co. under the provisions of the act of July 1, 1898, are within the purview of the circular of February 21, 1908, which requires the selector or locator in all cases of applications to locate scrip, warrants, certificates, soldiers' additional rights, or lieu selections of public lands, to post and publish for a period of 30 days a notice describing the land located or selected; and where publication and posting of notice of a selection under that act has been made in accordance with said circular, further publication and posting covering such of the selected lands as are within 6 miles of a mineral entry, claim, or location, in conformity with the circular of July 9, 1894, should not be required.

40-436

1264. The act is limited to conflicting claims upon odd-numbered sections in either the granted or indemnity limits of the grant; hence conflicting claims in an even-numbered section are not subject to adjustment under said act.

31-161

1265. Purchasers under section 5, act of March 3, 1887, of lands covered by an expired preemption filing at the date of the attachment of rights under the grant, and for that reason erroneously held to have been excepted from the grant, are not claimants adverse to the company, and their claims are not subject to adjustment under the act.

31-254

1266. The act refers to conditions existing at the time of its passage, and if the conditions were such at that time as to permit the adjustment of the conflicting claims of the company and an individual claimant, to a tract selected by the company within the indemnity limits of its grant, the fact that the Land Department failed to proceed under the act until after the individual claimant had relinquished his claim in order that his son might make entry thereof, will not prevent such adjustment being made, and the action of the individual whose claim was pending at the date of the passage of the act, in

so relinquishing his entry, will be considered as equivalent to an election on his part to retain the land for the purpose of the adjustment.

32-369

1267. The act contemplates only such conflicting claims as had an actual or potential existence at the date of its passage, and can not be invoked for the purpose of reviving claims which had theretofore been finally determined and the adjudication accepted by the parties as settling the controversy.

36-523

1268. Possession and occupancy of a tract with intention to subsequently enter it under the timber-culture law do not serve to bar indemnity selection thereof; and a claim under said law, based upon mere possession and occupancy, is not subject to adjustment under the act, as the claimant is not a purchaser, and was not a settler, under color of title or claim of right under any law of the United States or ruling of the Land Department, at the date of the passage of said act.

30-250

1269. In the case of an unperfected claim, the relinquishment contemplated by the act is of the whole thereof, and where such claim includes land in both odd and even numbered sections, and the individual claimant as against the company had, prior to the execution of a relinquishment under said act of the portion in the odd-numbered section, made entry for that portion of the claim within the even-numbered section, such partial relinquishment of the claim should not be accepted as a basis for the transfer of that portion of the claim to other lands.

30-193

1270. Selection by an individual in lieu of an *uncompleted* claim relinquished under the act is restricted to land in one compact body, in conformity with the law under which the original claim was initiated; but selection in lieu of a *completed* claim may be made of noncontiguous tracts, provided it is confined to one transaction and to lands in the same land district.

38-326

1271. The stipulation entered into between the Northern Pacific company and the St. Paul, Minneapolis & Manitoba company, whereby the latter consented and agreed that the former should be adjudged the owner of certain lands theretofore selected by both companies, within

the conflicting indemnity limits of their respective grants, the superior right to which had been held to be in the Manitoba company, but which lands had not been certified or patented, and the decree of the United States circuit court, rendered by consent of said companies in pursuance of such stipulation, in legal effect operated as a waiver and relinquishment by the Manitoba company of all claim to said lands, under its grant, as against the Government. 30-594

1272. A certified copy of such decree having been filed in the General Land Office, it is the duty of the department to take cognizance of the legal effect thereof in so far as the same pertains to the claim theretofore asserted to said lands by the Manitoba company and the consequent effect of the elimination of such claim upon conflicting claims asserted thereto by a settler and the Northern Pacific company, respectively, and if the facts shown, in the absence of the claim theretofore asserted by the Manitoba company, would otherwise bring the conflicting claims of such settler and the Northern Pacific company within the purview of the act, such conflicting claims should be adjusted in accordance with its provisions. 30-595

1273. The completion of a preemption filing subsequently to the passage of the act, under a declaratory statement filed prior to said act, for land listed by the company within the indemnity limits of its grant, is equivalent to an election by the claimant to retain the land, and the fact that the Land Department failed to list the land for relinquishment by the company until after the intervention of another claim for the land, will not prevent an adjustment being made under said act on account of the claim pending at the date of its passage. 32-367

1274. Lands lost to the company within the primary limits of the grant made by the joint resolution of May 31, 1870, do not constitute a sufficient base for the selection of lands within the indemnity limits of the grant made by the act of July 2, 1864; but where, prior to January 1, 1898, such a selection was proffered, of lands properly subject to selection but for a homestead entry covering the same, and a valid base for such selection is substi-

tuted, though subsequently to the act of July 1, 1898, the conflicting claims of the entryman and the company as thus presented are subject to adjustment under said act. 32-654

1275. Any conveyance by the company of lands within the purview of the act after acceptance of the act by the company, is subject to the right of the individual claimant to assert his right of election to retain the land in conflict. 38-505

1276. The company can not by sale or contract to sell lands within the limits of its grant after definite location and subsequent to the act of July 1, 1898, defeat the right of an adverse claimant to have his claim adjusted under that act. 37-569

1277. Where the company declines to reconvey a tract inadvertently patented to it in the face of a pending adverse claim, with a view to adjustment of the conflicting claims under the act, on the ground that it has theretofore sold the tract, and suit is thereupon instituted which results in annulment of the patent, the company is nevertheless entitled to have its claim adjusted under said act. 37-421

1278. Where the company declines to relinquish a tract under the provisions of the act, on the ground that it has theretofore sold the tract, and the Land Department thereupon considers the conflicting claims to said tract and holds the land excepted from the grant, such adjudication will not prevent the adjustment of such conflicting claims under the act where the company subsequently makes settlement of its outstanding contract of sale and secures a reconveyance of the land from its purchaser. 33-150

1279. Where the company declines to relinquish a tract in favor of a claimed settlement right, on the ground that it has sold or contracted to sell the land, the settler is entitled, where the records of the county in which the land lies do not evidence such sale or contract to take issue upon the allegation of sale and to have a hearing to ascertain whether such sale or contract has in fact been made. 39-389

1280. One who settles upon land within the primary limits of the grant to the company after its right thereto has attached, and through ignorance of the law

fails to claim the benefit of the act prior to patenting the land to the company, and title to the land, which is within the limits of a forest reserve, thereafter reverts in the United States under the act of June 4, 1897, may be permitted, under the act of April 15, 1902, to carry his claim to completion. 33-367

1281. An application to make forest lieu selection under the act of June 4, 1897, by one who has done all that the law requires to entitle him to the selection, constitutes a claim subject to adjustment under the act of July 1, 1898, as extended by the act of May 17, 1906. 38-399

1282. Where at the time of the passage of the act the conflicting claims of a homestead settler and the company were of a character subject to adjustment under that act, the fact that the settler subsequently purchased the land from the company in order to protect his improvements will not prevent him from transferring his claim to other lands in accordance with the provisions of said act. 34-209

1283. Where a tract of land falling within the Northern Pacific grant and not excepted therefrom was sold by the company prior to January 1, 1898, and the purchaser thereafter, because of the erroneous decision of the Land Department holding said land to have been excepted from the grant, sought to supplement his title by purchase of the lands from the United States under section 5, act of March 3, 1887, these facts alone do not present such conflicting claims on January 1, 1898, between the purchaser and the company, as are subject to adjustment under the act of 1898. 34-575

1284. Where a tract of land was inadvertently patented to the company, either prior or subsequently to the act, during the pendency of an application to make homestead entry thereof based upon settlement made in good faith prior to January 1, 1898, the conflicting claims of the company and the settler are subject to adjustment under the provisions of said act, notwithstanding the issuance of such patent. 34-146

1285. The act is not operative as to lands patented prior to its passage. 29-224

1286. Patented lands which on January 1, 1898, were involved in a pending controversy in the courts, between the company and the patentee, come within the purview of the act and the parties are entitled to the right of adjustment. 37-496

1287. The provisions of the act are applicable to patented lands, whether patented before or after the act, if such lands are in dispute between the company and the individual claimant and belong to either of the classes described therein, and where patents issued to individual claimants prior to the act, under rulings then in force, which under rulings now governing would have to be held to have been improperly issued, the conflicting claims to such lands are subject to adjustment under the act, provided the company has not, by the selection of other lands in lieu of those in controversy, or otherwise, abandoned its claim thereto. 34-484

1288. Under the act the company is bound to accept the list of lands subject to relinquishment prepared and submitted to it by the Secretary of the Interior, and can not, as a matter of right, require of the individual claimant the establishment of his claim at a hearing; but where a settlement claim has, upon an *ex parte* showing by the settler, been included in such a list, the department, notwithstanding the approval of the list, has the right to inquire, by hearing or otherwise, whether the showing on which the tract was listed represented the true condition or status of the tract on January 1, 1898. 34-153

1289. All action looking to the disposition of lands involved in second indemnity selections made by the company in lieu of lands alleged to have been lost to its grant within the limits of the withdrawal on general route of the Lake Superior & Mississippi company, has been suspended by the Land Department to await final determination of the question (now pending before the Supreme Court) whether lands so situated furnish a sufficient basis for second indemnity selection; but where it appears that any such lands are embraced in entries allowed prior to selection by the company, the suspension as to such

lands will no longer continue. Action on such entries will proceed in due course and the selection to that extent will be canceled. In case of a decision favorable to the company on the question pending before the court, it may then relinquish whatever claim it may have to the lands under its selection, with a view to selection of other lands in lieu thereof under the act of 1898. 34-207

1290. Where the conflicting claims of the company and a homestead entryman are subject to adjustment under the act, and the entryman, after patent, conveys a portion of his claim to another, by legal subdivisions, the conflicting claims of the company and the purchaser to the portion so transferred are subject to adjustment under said act. 35-448

1291. Where an owner of land entitled to the right of election accorded by the act transfers the same, such sale will not *per se* be presumed to be an election to retain the land; and in such case the right of election may be exercised by the transferee. 37-414

1292. No such vested interest is acquired to land within the primary limits of a railroad grant by filing map of general route and withdrawal based thereon as will prevent disposition of the land by the United States prior to filing of map of definite location; and where entry is allowed prior to definite location and afterwards canceled under an erroneous construction of the grant, the conflicting claims are subject to adjustment under the act, unless the entryman had, prior to January 1, 1898, by acceptance of the money paid upon said entry, or otherwise, abandoned his claim to the land. 35-588

1293. One who prior to January 1, 1898, settled upon unsurveyed lands within the limits of the grant to the Northern Pacific and within 90 days after the filing of the township plat had his claim placed of record and declared his election to retain the land, is entitled to have his claim adjusted under the act. 37-569

1294. A settlement claim to unsurveyed lands within the primary limits of the grant, existing at the date of definite location of the line of road opposite thereto, thereafter maintained, asserted through

the usual form of entry, and patented, after the elimination of all claim under the grant by formal decision of the Land Department, long prior to passage of the act, will not be reopened and adjusted under said act upon the ground that the settler was in laches in not making timely assertion of his claim upon the filing of the township plat of survey. 35-359

1295. All the odd-numbered sections within the overlap of the grant eastward from Portland, Oreg., made to the Northern Pacific by act of July 2, 1864, and the grant northward from said point made by joint resolution of May 31, 1870, were by virtue of the decision of the department of July 18, 1895, in the case of *Spaulding v. Northern Pacific*, in dispute at date of the act of July 1, 1898, and settlements upon any portion of said lands subsequent to that decision and on or prior to January 1, 1898, were made under a ruling of the Interior Department, within the meaning of that act, even though upon lands theretofore patented to the company, and where such lands were not sold by the company prior to July 1, 1898, the conflicting claims of the settlers and the company thereto are subject to adjustment under said act. 35-49

1296. Claimants for lands within the Northern Pacific grant entitled to an election under the act of July 1, 1898, who after the passage of that act have placed it beyond their power to return the land to the company in substantially the same condition as at the date of the act, should be held to have elected to retain it. 36-283

1297. One claiming lands within the Northern Pacific grant who, either prior or subsequent to the act of July 1, 1898, denuded the land of its timber, which constituted its chief value, does not come within the intent and purpose of the act and is not entitled to have his claim adjusted under its provisions. 38-616

1298. A settler who prior to the act of July 1, 1898, sold to another his right to purchase the lands from the company and abandoned his residence thereon thereby recognized the company's superior right and terminated his own interest in the land, and therefore has no claim subject to adjustment under said act. 36-270

1299. The right to select other lands in lieu of those relinquished by an individual claimant under the act of July 1, 1898, does not accrue until acceptance of the tendered relinquishment by the Commissioner of the General Land Office; and prior to that time application to select will not be accepted subject to final determination of the right of selection.

36-299

1300. While under the third proviso to the act of July 1, 1898, the company is accorded the privilege to relinquish its claim to any lands within the primary limits of its grant in favor of a settler thereon after the passage of said act and subsequent to the vesting of title in the company by definite location, and to select other lands in lieu thereof, it is not required to do so, and the Land Department is without authority to compel such relinquishment.

36-526

1301. The provision respecting relinquishments by the company in favor of settlements made upon unsurveyed lands after January 1, 1898, is not mandatory but merely extends a privilege to the company to select other lands for such as it may relinquish, upon such favorable terms as should reasonably induce the relinquishment, and thus protect settlements made at a time when it could not be reasonably ascertained whether they would fall upon odd or even numbered sections.

36-182

1302. Congress having by the acts of July 5, 1884, and August 23, 1894, provided a special and exclusive mode for disposal of lands in abandoned military reservations, such lands are not subject to selection by the company under the act of July 1, 1898.

37-667

1303. The lands formerly embraced within the reservation of the Gros Ventre and other Indians and restored to the public domain by act of May 1, 1883, are subject to lieu selection by the company under the act of July 1, 1898.

37-403

1304. There is nothing in the act of August 15, 1894, providing for the opening of lands in the Siletz Indian Reservation, to prevent a settler on an odd-numbered section within the limits of the grant to the Northern Pacific, who relinquished his rights under the act of July 1, 1898, from

transferring his claim to lands within that reservation, with credit for residence on the relinquished lands.

37-280

1305. Determination of the issue raised by a protest against a selection of unsurveyed lands by the company under the act of July 1, 1898, based upon adverse settlement rights, should not be postponed to await survey of the lands, but hearing to settle the controversy should be promptly had.

38-539

1306. A valid selection by the company under the act of July 1, 1898, subsisting at the date of the proclamation establishing the Coeur d'Alene National Forest, excepts the land from the proclamation.

39-343

1307. Regulations of July 6, 1906, under act of May 17, 1906, relating to adjustment of Northern Pacific grant.

35-10

1308. A selection by a State under the act of August 18, 1894, can not, prior to approval thereof, be considered an "entry" within the meaning of the act of May 17, 1906, and the conflicting claims of the State and the company thereto are not subject to adjustment under said act.

35-46

1309. The purpose of the act of May 17, 1906, is to extend relief in the same class of claims as the act of July 1, 1898, where the same were initiated, within the territory described, after January 1, 1898, and prior to May 31, 1905.

35-46

1310. A homestead entry erroneously allowed for land within the Northern Pacific grant subsequent to the act of July 1, 1898, and actually abandoned prior to, although not canceled of record until after, the act of May 17, 1906, does not constitute a claim subject to adjustment under said acts.

36-266

1311. One who settled upon a tract but did not continue to reside thereon, and neither on January 1, 1898, nor at date of the act of July 1, 1898, was claiming the land but had apparently abandoned the same, has no claim subject to adjustment under that act or the act of May 17, 1906.

38-385

1312. An application to purchase under the timber and stone act, accompanied by a tender of fees, presented before, but upon which proof and payment were not

made until after May 31, 1905, does not present a claim subject to adjustment under the act of July 1, 1898, as extended by the act of May 17, 1906. 38-526

1313. Where part of the land selected by an individual claimant under the act of July 1, 1898, as extended by the act of May 17, 1906, in lieu of a completed claim, is relinquished by claimant to avoid conflict with a prior right, he may be permitted to make supplemental selection of an equal amount of land, which need not be contiguous to nor in the same land district as the land embraced in the original selection. 39-318

XVI. Forfeiture.

1314. Forfeiture for breach of condition subsequent may be declared judicially or by act of Congress. 14-321, 328

1315. Lands granted do not revert after condition broken until forfeiture has been declared either through judicial proceedings or legislative enactment. 1-345; 5-81; 8-589; 10-317

1316. Forfeiture on failure of the company to construct its road within the period fixed by the granting act can only be enforced through the courts or by Congress. 21-471

1317. The department can not enforce forfeiture though the company has not complied with the terms of the grant. 1-328

1318. A provision that all lands not disposed of within three years after completion of the road shall be subject to settlement as other lands (the purchase price to be paid to the company) is a condition subsequent, and default therein does not defeat the grant. 1-345

1319. Completion of road within time allowed is a condition subsequent of which no one can take advantage except the grantor. 1-360

1320. Patent can not be refused on the ground that the road was not completed within the time required by the granting act. 1-378

1321. Failure to construct road within the time named does not defeat, in the

absence of forfeiture through the action of Congress or the courts. 5-81, 511; 8-589

1322. Though breach of condition subsequent may appear, in the absence of declaration of forfeiture patents must issue for granted lands along the constructed line and indemnity selections therefor (Wisconsin Central). 6-190

1323. No authority conferred upon the department to enforce the last clause in section 3, act of July 1, 1862 (Sioux City & Pacific). 1-345

1324. The grant of the California & Oregon company having expired, further selections are not allowed pending legislative action as to forfeiture. 3-604

1325. Selections not received where the road was not constructed within the required period (California & Oregon). 1-330

1326. The Central Pacific (successors to the California & Oregon) company have failed to complete their road in the prescribed time (July 1, 1880), but as Congress has not declared the consequent forfeiture provided in the granting act, patents must issue for the granted lands as they are earned by the construction and acceptance of a portion of the road. 2-489

1327. The additional provision that, on failure to complete the road (Central Pacific) in the prescribed time, the granting "act shall be null and void" adds nothing to the legal effect of the forfeiture clause. 2-491

1328. If the whole of the proposed road has not been completed, any forfeiture thereon can only be asserted by the grantor, the United States, through judicial proceedings or action of Congress. 2-491

1329. No proceedings can be taken, even by Congress, to declare a forfeiture of the Northern Pacific grant until one year after the time fixed for completion of the road (July 4, 1880). 2-859

1330. The failure of Congress to take action, though its attention has been called to the fact that large tracts of land are reserved by withdrawal for uncompleted roads, is accepted as an expression of the

legislative will that the decisions of the courts and the opinions of Attorneys General upon the points involved (that the grant must be held intact) shall be a guide to the Secretary in administering the law. 2-549

1331. At Portland, Oreg., the Northern Pacific has two grants, the first eastward, under the act of 1864, and the second northward, under the joint resolution of 1870, and, so far as the limits of the grant east of said city overlaps the subsequent grant, the latter must fail, and, as the road at such point eastward is unconstructed, and the grant therefor forfeited by the act of September 29, 1890, the lands so released from said grant do not inure to the latter grant, but are subject to disposal under said forfeiture act. (See 31-151.) 21-57

1332. Forfeiture of, and circular order as to restoration under act of January 13, 1881. 5-165

1333. Under act of January 31, 1885, no lands were forfeited along that part of the road constructed (Oregon). 4-15

1334. The forfeiture of the Texas Pacific grant included lands along the branch line of the Southern Pacific where it passes through land withdrawn for the former company. 4-215

1335. Act of forfeiture (Oregon Central) executed by adjusting separately at the point of junction the limits of the two roads included in said act. 5-549

1336. Title under the grant not defeated by failure of the company (Northern Pacific) to pay for the survey. 5-343

1337. The forfeiture of the grant to the Atlantic & Pacific did not reinvest the Southern Pacific with the interest of which it was divested by the definite location of the Atlantic & Pacific. 6-349

1338. The act of July 6, 1886, forfeiting the grant to the Atlantic & Pacific did not give the Southern Pacific any rights to lands so forfeited and lying within its indemnity limits; but said lands reverted to the United States, and after the passage of said act were open to settlement. 17-391

1339. All questions affecting any claimed right of the Southern Pacific under its

grant of March 3, 1871, to lands within the forfeited Atlantic & Pacific grant, have been fully determined by the supreme court in favor of the United States. 33-514

1340. The act of June 28, 1884, forfeited the grant to the Iron Mountain road and confirmed entries allowed for lands within said grant. 6-443

1341. Actual rights acquired by construction of road not affected by congressional forfeiture (Oregon Central). 5-549

1342. Adjustment of conflicting rights under the act of July 6, 1886, forfeiting the grant of the Atlantic & Pacific. 5-269

1343. The forfeiture of the grant of June 3, 1856, by the act of July 14, 1870, rendered the lands embraced therein at once subject to settlement. 10-637

1344. Lands of the Texas Pacific forfeited grant restored to entry. 3-450

1345. Order restoring to entry the lands of the forfeited Texas Pacific should include certain lands along the branch line of the Southern Pacific where it passes through the limits of the former. 3-472

1346. Not a declaration of forfeiture to restore to the public domain lands certified back by the State as unearned under the grant. 6-162

1347. The forfeiture act of March 2, 1889, operated to restore to the public domain the lands forfeited thereby free from the effects of the original grant and the certification thereunder. 19-307

1348. The lands certified under the grant of June 3, 1856, and embraced within the forfeiture act of July 14, 1870, were by said act restored to the public domain and the certifications thereof vacated; the lands so released, being public when the grant to the New Orleans & Pacific became effective, passed to said company. 14-321, 328; 16-65; 21-246

1349. The forfeiture declared by act of September 29, 1890, was complete on the passage of the act and opened to settlement at once the lands designated therein. 14-359

1350. The forfeiture provision in the act of September 29, 1890, did not operate upon lands opposite completed roads. 30-319

1351. A homestead settler, who by alienation of the land has disqualified himself as an entryman, is not entitled to relief under the act of June 22, 1874, extending the time for the completion of certain railroads in Minnesota and protecting the rights of settlers prior thereto. 25-530

1352. The conditions on which extension of time was given by act of June 22, 1874, operates as a revocation of the grant to the extent of the rights of actual settlers at the date thereof. It is in effect an extension of the protection intended to be given by the excepting clause in the original grant, and is applicable to all lands whether patented or otherwise. (St. Paul, Minneapolis & Manitoba.) 18-101; 21-436; 24-226; 26-226; 27-391

1353. To the extent of the lands occupied by actual settlers the State act of March 1, 1877 (Minnesota), was a forfeiture, and where the governor of the State has relinquished such lands in accordance with said act they are restored to the public domain free from their previous patented condition. 21-254

1354. The act of March 1, 1877, of the State Legislature of Minnesota contemplated in the use of the words "legal and full title," a title which could not be successfully assailed; hence a conveyance of lands by the State to the company in excess of the amount to which the company was then entitled, and prior to the passage of said act, is no bar to the State's reconveyance to the United States of a tract embraced therein for the benefit of a settler as provided by said act. 26-582

1355. The rule laid upon the Ontonagon & Brule Railroad Co. to show cause why an order of forfeiture should not be made for failure to construct the last 8 miles of its road dissolved, the answer thereto being satisfactory. 13-462

1356. The provision in section 3, act of July 1, 1862, incorporating the Union Pacific, that the lands granted and unsold after three years from completion of the road should be subject to settlement, can not be enforced as against a mortgage on said lands wherein the fee is hypothecated to secure payment of a debt not yet due. 20-466

1357. Under the grant to the State of Mississippi the right to sell the lands along 40 miles of the located line was conferred on completion of the first 20 miles; and, under the laws of said State a mortgage on said lands would operate as a sale thereof, in case of default on the part of the mortgagor, and take the lands so sold out of the operation of the forfeiture act of September 29, 1890. 19-534

1358. The Hastings & Dakota is entitled to the lands earned prior to forfeiture of its charter, and the State can not, through legislation intended to operate as a forfeiture, and the relinquishment of the lands by the governor, defeat the right of said company to receive said lands through its trustee. 21-312

1359. The judicial proceedings resulting in a decision that the Hastings & Dakota company, by failure to maintain its road, had forfeited all rights under its charter, including its land grant, except as to lands already earned, accepted by the department as determinative of the rights of the company, under the laws of the State, in regard to matters properly passed upon. 18-511

1360. That a railroad is not constructed within the period fixed by the grant, or that the charter of the company is declared forfeited by judicial decree, does not authorize the department to disregard the grant, and withhold title to lands which, under the terms of the grant, were subject thereto, and became the property of said company prior to forfeiture of its charter. 17-302

1361. The confirmation by the third section of the act of March 2, 1889, forfeiting certain lands granted to aid in the construction of railroads, so far as it may embrace lands included in approved selections made by the State of Michigan on account of the canal grant of July 3, 1866, is dependent upon whether such lands were, on May 1, 1888, in the actual occupancy of a *bona fide* preemption or homestead claimant; if so, the preemption or homestead claim is confirmed without regard to such previously approved State selection, but proof of qualification and compliance with law on the part of such

homestead or preemption claimant must be shown in the usual manner. 30-160

1362. In the absence of some specific provision to the contrary in legislation respecting the public lands, the administration thereof is wholly within the jurisdiction of the Land Department, and the determination of rights under the forfeiture act of March 2, 1889, falls within that jurisdiction. 30-160

1363. The suit instituted by the United States in December, 1890, in the Circuit Court of the United States for the Western District of Michigan, against the Lake Superior Ship Canal, Railway & Iron Co., did not operate to divest the Land Department of jurisdiction, or require a suspension of proceedings before the Land Department upon a claim filed by a preemptor invoking the confirmatory provisions of said forfeiture act, where such preemptor was not made a party to said suit until long after the filing of his claim in the Land Department. 30-160

1364. The proceedings by a homestead or preemption claimant to obtain recognition of his claim under the confirmatory provisions of the forfeiture act of March 2, 1889, are essentially the same as those governing the submission of final proof in ordinary homestead and preemption cases, and rules of practice 5 to 16, inclusive, respecting notice and hearings in contest cases, do not apply thereto. 30-160

1365. The presence of rival preemption claimants on May 1, 1888, each within the confirmatory provisions of the forfeiture act, will not operate to the advantage of a claimant under the canal selection. 30-160

1366. The preference accorded by said forfeiture act to preemption and homestead claimants of the class therein described is in no respect affected by the confirmatory provisions of either the act of March 3, 1887, or March 2, 1896, where the same are invoked by a claimant under a canal selection, because the earlier act is confined to certifications or patents "to or for the use or benefit of any company claiming by, through, or under grant from the United States to aid in the construction of a railroad," and the latter does not in terms include canal selections

or by its language evidence a purpose to repeal such preference. 30-160

1367. The act of March 2, 1889, forfeited lands granted to the State of Michigan by the act of June 3, 1856, in aid of railroads, and the third section of that act confirmed certain disposals made of the forfeited land by proper officers of the United States, with a proviso "that nothing herein contained shall be construed to confirm any sales or entries of lands, or any tract in such State selection upon which there were *bona fide* preemption or homestead claims on the 1st day of May, 1888, arising or asserted by actual occupation of the land under color of the laws of the United States, and all such preemption and homestead claims are hereby confirmed." *Held*: That such proviso is a saving clause in favor of such claimants who may entitle themselves to patents, and not an excepting clause which would prevent the confirmation becoming effective as to such lands upon abandonment of the claims thereto. 32-126

XVII. Certification and Patent.

See PATENT.

1368. The general rule applicable to grants to States for railroad purposes in respect of title by patent or certification is found in section 2449, R. S. 2-496

1369. The certification of land in accordance with the act of August 3, 1854, is of no operative effect if the land in fact was excepted from the grant. 23-343

1370. After certification it is the duty of the Land Department to issue patents; when issued, they take effect by relation as of date of certification and cut off intervening claims. 2-497

1371. Where title (to granted or indemnity lands in Minnesota) passed by certification all control of the executive department over the title thereafter ceased. 2-497, 498

1372. Certification of certain lands to the State of Minnesota under act of July 13, 1866, perfected the title in the State, and patent was not necessary for that purpose. 2-492

1373. The tract in question was within the terms of the act of 1856 (grant to Iowa), and when it was selected and the

selection approved and certified by the Commissioner of the General Land Office the title became perfect in the State.

2-497

1374. By certification of lands under the grant of June 3, 1856, they are as fully separated from the public domain and removed from departmental control as though patent had issued therefor.

23-310

1375. Patent required to pass title, under the grant of July 4, 1866, to the State of Minnesota. (See 2-492.) 1-351

1376. Patents must issue in the name of the company to whom the grant is made, without respect to the fact that a portion of the road is now owned by another company. 12-116

1377. Under the grant to the Northern Pacific patents should issue to that company and not to a grantee thereof. 24-138

1378. Directions given in the matter of the issuance of patents on account of the grants made by the acts of July 1, 1862, and July 2, 1864, to aid in construction of the Central Pacific Railroad, and the grant made by the act of July 25, 1866, to aid in construction of the California & Oregon Railroad. 29-589

1379. Directions given that hereafter patents shall issue to the Union Pacific Land Co., as the successor in interest of the Kansas Pacific Railway Co., for any lands which the latter company is entitled to under congressional grants to aid in construction of the Kansas Pacific Railway. 29-94

1380. Directions given that hereafter patents shall issue to the "Union Pacific Railroad Co.," as successor in interest of the Union Pacific Railway Co., for any lands which the latter company was entitled to under the grants of July 1, 1862, and July 2, 1864, on account of the construction of the main line of the Union Pacific Railroad. 29-26

1381. Directions given for recognition of the Northern Pacific Railway Co., as successor of the Northern Pacific Railroad Co., in the approval of lists and issuance of patents on account of the grant to the latter company. 29-387;

33-634; 34-105; 36-369; 38-378

1382. There is no authority for insertion, in patents under railroad land grants,

of the clause, "excepting all mineral land, should any such be found in the tracts aforesaid"; and in all future railroad land-grant patents said excepting clause will be excluded. 32-342

1383. The mere fact that patent was erroneously issued upon a railroad indemnity selection, without awaiting the expiration of the period within which an applicant to select the same land under the act of June 4, 1897, was entitled to appeal from rejection of such application, will not warrant the institution of suit to vacate the patent, where it appears the patentee is entitled to the land and cancellation of the patent would have to be followed by issuance of a new patent to the same patentee. 37-670

1384. In 1892 the Southern Pacific filed application, subsequently approved, to make selection of a certain legal subdivision, described according to the official plat of survey (of 1869) then in use as "fractional section 1" of a certain township and as containing 641.40 acres. In 1894 a resurvey of the township was made, on the plat whereof the subdivision so selected was shown as lot 37, and another and different tract was shown as section 1, also fractional, containing 206.47 acres. In 1896 patent issued to the company, on its approved selection, for "all of fractional section 1, containing six hundred and forty-one acres, and forty hundredths of an acre," in said township.

Held: That in view of the record upon which it issued, the patent vested title to the tract actually selected and intended to be selected by the company in accordance with the original survey, the identity of which tract was preserved upon resurvey, and not to the tract designated as fractional section 1 by the later survey. (See 40-528.) 37-243

1385. Where a railroad company applied to select a certain described quarter section of land, but prior to approval of the selection the township was resurveyed, and the latter survey approved and plat thereof filed in the local office, the subsequent approval of the selection and issuance of patent thereon carries title to the designated quarter section as fixed by the survey in force at the time the patent was issued. 40-528

RAILROAD LAND.

See RAILROAD GRANT.

- I. Generally.
- II. Act of March 3, 1887.
- III. Act of March 2, 1889.
- IV. Act of September 29, 1890.
- V. Act of March 2, 1896.

I. Generally.

1. Certain lands in Washington Territory withdrawn for the Northern Pacific restored to entry. 5-193

2. Notice of restoration of all lands withdrawn on account of the Northern Pacific east of the terminal line at Duluth. 25-48

3. Directions given for the suspension from entry and patent of lands remaining undisposed of in odd-numbered sections within that part of the formerly recognized limits of the Northern Pacific grant lying east of Duluth. 26-265

4. Directions given for suspension from entry and patent of lands falling within the purview of departmental decision upon *Spaulding v. Northern Pacific*, 21 L. D., 57. 25-255

5. Circular of August 5, 1896, under act of June 3, 1896, relative to settlers on Northern Pacific indemnity lands. 25-256

6. Circular of May 13, 1904, under act of April 19, 1904, relative to settlers upon Wisconsin Central Railroad and The Dalles military wagon-road grants. 32-620

7. Instructions defining scope of investigation directed to be made by the act of February 26, 1904, with a view to legislation for the relief of settlers on certain lands in Sherman County, Oreg., within that part of the grant of February 25, 1867, to aid in construction of what was afterwards known as The Dalles military wagon road, overlapped by the withdrawal under the grant of July 2, 1864, in aid of the construction of the Northern Pacific Railroad. 32-615

8. Circular of May 22, 1906, under act of April 17, 1906, relative to settlers upon St. Paul, Minneapolis & Manitoba lands. 34-630

9. Circular of August 2, 1904, under act of April 28, 1904, relating to small-hold-

ing claims within the limits of the grant to the Atlantic & Pacific in New Mexico.

33-156

10. Lands valuable for coal, relinquished by the Santa Fe Pacific Railroad Co. in favor of small holding settlers, under the act of April 28, 1904, may be patented to such settlers, if qualified under the act, notwithstanding their coal character.

39-135

11. The Santa Fe Pacific Railroad Co., upon relinquishing under the act of April 28, 1904, lands valuable for coal, is entitled to select in lieu thereof coal lands equal in value to those relinquished.

39-135

12. Within New Mexico, formerly granted to the Atlantic & Pacific, restored to public domain and opened to entry at double minimum. (See 27-241.) 5-269

13. The forfeited lands in conflicting limits (Atlantic & Pacific and Southern Pacific) withheld from entry pending adjustment. 5-269

14. Plan of restoration suggested in the case of the forfeited lands within the common limits of the Atlantic & Pacific and Southern Pacific. 6-349

15. Unpatented lands within the granted limits of the Atlantic & Pacific and the granted and indemnity limits of the Southern Pacific restored to settlement and entry. 6-816

16. Directions given for restoration of lands withdrawn for the benefit of the Southern Pacific lying within the primary limits of the grant to said company and indemnity limits of the Atlantic & Pacific. 16-317

17. Order of July 18, 1894, restoring lands within the conflicting limits of the Southern Pacific and Atlantic & Pacific. 19-45

18. The order of November 22, 1897, suspending action relative to the right of the Southern Pacific company to make indemnity selections within the forfeited primary limits of the Atlantic & Pacific grant, revoked, and directions given with respect to the disposition of lands in said limits. 26-48

19. The departmental order of January 18, 1898, 26 L. D., 48, with respect to restoration of lands within the forfeited

primary limits of the Atlantic & Pacific grant, modified. 26-97

20. Order of April 13, 1898, restoring to the public domain lands lying within the overlapping limits of the Southern Pacific and the forfeited portion of the Atlantic & Pacific. 26-697

21. Instructions of January 13, 1896, as to disposition of lands within the overlap of the grants of 1864 and 1870 to the Northern Pacific, and covered by forfeiture act of 1890. 22-14

22. The departmental order of October 10, 1887, restoring to entry the lands formerly withdrawn for the Marquette, Houghton & Ontonagon company made provision for receiving applications to enter lands covered by pending unapproved selections, subject to the claim of the company. 13-56

23. Under the adjustment made necessary by the act of forfeiture of January 31, 1885, the lands lying within the quadrant formed by the limit lines north of Forest Grove must be restored to the public domain. 5-549

24. Circular provisions of April 30, 1887, as to settlers within the grant to the State of Kansas to aid in the construction of the Northern Kansas railroad. 5-627

25. Unearned lands relinquished by the State (Iowa) restored to the public domain. 6-47, 162

26. Restored to the public domain as unearned under the grant. 6-47, 162

27. Certain unpatented selections (Burlington and Missouri River in Nebraska) canceled and lands restored to public domain. 6-589

28. Certain, under former withdrawals for the Union Pacific at Denver restored December 7, 1887. 6-385

29. Former directions given in the matter of the restoration and disposition of lands withdrawn for the Chicago, St. Paul, Minneapolis & Omaha grant, and not taken thereunder, modified. (See 11-607.) 12-259

30. Restoration of lands embraced in the Bay de Noquet and Marquette grant and relinquished to the Government. 15-312

31. Order restoring lands certified for the Bay de Noquet grant provided that

applications to enter such land filed prior thereto should confer no right. 16-332

32. The right of way and station grounds of the Chicago, Milwaukee & St. Paul company forfeited under the act of March 2, 1889, restored to the public domain. 20-121

33. Applications for indemnity lands restored under the rule of May 23, 1887. Circular of September 6, 1887. 6-131

34. Proceedings directed for the vacation of certain patents erroneously issued to the Southern Pacific for lands excepted from its grant by conflict with the prior grant to the Atlantic & Pacific. 6-816

35. Suit advised to vacate patents issued to Union Pacific for lands south of terminus of Denver Pacific at Denver and west of terminus of Kansas Pacific at the same place. 6-385, 581

36. Directions given for suspension, until December 1, 1903, of all proceedings for patenting, under the Union Pacific grant, of the odd-numbered sections in certain designated boundaries within the limits of said grant, and also for the suspension until said date, from location and disposition under any of the public land laws, other than the mining laws, of certain other lands within said designated boundaries, all in the Evanston land district, Wyo., with a view to permitting such lands to be prospected and explored for oil deposits supposed to be contained therein. 32-48

37. Land within the limits of a grant, but excepted therefrom, is open to entry without restoration notice. 9-213

38. On the judicial vacation of a patent issued under a railroad grant, the Secretary may lawfully fix a day when the lands embraced in such decree shall be open to entry. 23-407

39. A decision of the Supreme Court of the United States that annuls a patent to a railroad company, and restores title to the Government, renders the lands subject to settlement, in the absence of any prohibition; but it is competent for the Land Department to determine when said lands shall be opened to entry, and make due provision therefor. 26-350

40. A decision of the department directing that a tract that had been embraced in a railroad indemnity selection should be

held "subject to entry by the first legal applicant" operates to restore such tract to the public domain as effectually as though restored to settlement and entry.

26-538

41. Circular of April 30, 1886, under act of January 13, 1881, with respect to settlement rights on lands restored to settlement and entry.

5-165

42. The right of purchase under the act of January 13, 1881, must be exercised within three months after restoration.

9-74

43. The right of purchase under the act of January 13, 1881, extends only to lands withdrawn and subsequently restored.

6-750

44. Applicants for the right of purchase under the act of 1881 must show under oath the facts of settlement, improvement, and requisite qualifications.

6-750

45. Land excepted from a railroad grant and consequently not withdrawn for its benefit not subject to purchase under the act of January 13, 1881.

8-344; 18-528

46. An application to purchase under the act of January 13, 1881, confers no rights upon the applicant if the land was not in fact withdrawn for the benefit of the railroad company.

17-391

47. Right of purchase conferred by the act of January 13, 1881, can only be exercised by an actual settler and does not extend to lands excepted from a withdrawal.

10-437; 17-95

48. The right of purchase under the act of January 13, 1881, can not be exercised by one qualified to take the land under the timber-culture law where the land is subject to such appropriation.

16-3

49. Purchaser under the act of January 13, 1881, must show actual settlement and that he can not acquire title under the preemption, homestead, or timber-culture law.

8-344

50. One who settles on, with permission of the company and intent to acquire title therefrom may purchase under the act of January 13, 1881, on failure of the company's title, on due application, if qualified.

15-193; 18-37

51. Applicant for the preference right of purchase under section 2, act of January 31, 1885, must show that he is an actual settler.

6-677

52. An indemnity selection, made for protection of one whose claim under the public-land laws has been rejected on account of the railroad grant, and who is consequently seeking title through the company, operates to reserve the land from other disposition, and if finally canceled, the occupant under the company's license is entitled to purchase under the act of January 13, 1881, if otherwise within its terms.

23-468

53. Preference right to restored lands under the act of January 31, 1885, accorded to settler.

4-15

54. One temporarily occupying land as the employee of another is not an actual settler under the act of January 31, 1885.

6-677

55. Right of an actual settler to enter lands embraced within the forfeiture act of January 31, 1885, not defeated by his temporary absence from the land at the passage of the act or an informal agreement to sell the lands if the grant was not forfeited.

12-378

56. Purchasers of certain lands in the vicinity of Denver authorized by the act of August 13, 1888, to enter said lands at Government price.

10-437

57. The act of August 13, 1888, is applicable only to land theretofore withdrawn by the executive department.

17-95, 315

58. Circular of November 1, 1890, under the act of August 29, 1890, for the relief of settlers on.

11-434

59. Circular of November 7, 1890, under the act of October 1, 1890, for the relief of settlers on Northern Pacific indemnity.

11-435

60. One who, under the act of October 1, 1890, transfers his settlement right and selects in lieu thereof a tract to which another holds a superior claim, must submit to an order of cancellation on proof of the prior claim.

20-72

61. A preemption entry can not be allowed under section 2, act of October 1, 1890, except on proof of continuous residence on the land so entered for a period of not less than three months prior thereto.

25-367

62. In the absence of a filing or entry for lands in the second indemnity belt of the Northern Pacific grant there is no

claim subject to transfer under section 2, act of October 1, 1890. 21-514

63. An entry made in pursuance of section 1, act of October 1, 1890, is not invalidated by an agreement to convey the land covered thereby, made prior to the consummation of the transfer authorized by said act. 22-375

64. Instructions under act of August 5, 1892, providing for the relief of certain settlers on, in North and South Dakota. 15-344

65. Instructions under the act of August 5, 1892, providing for the relief of settlers within the limits of the St. Paul, Minneapolis & Manitoba grant in the Dakotas. 15-536

66. Purchasers in good faith, prior to January 1, 1891, of indemnity lands from the Northern Pacific, that were subsequently held to fall within the grant to the St. Paul, Minneapolis & Manitoba, in North and South Dakota, are within the remedial provisions of the act of August 5, 1892, and may have their titles perfected thereunder in the absence of adverse claims. 18-459

67. The operation of the remedial act of August 5, 1892, as to an entry that falls within its terms at the date of its passage, is not defeated by a subsequent relinquishment of the entry. 23-586

68. The fact that a tract was, prior to survey, classified as mineral under the act of February 26, 1895, can not be considered a classification thereof as mineral "at the time of actual Government survey," within the meaning of the act of August 5, 1892. 34-211

69. Rights acquired by settlement and improvement upon unsurveyed land, and duly and timely asserted upon filing of the plat of survey, will, as against an intervening indemnity railroad selection, under the act of August 5, 1892, be protected in its entirety, even though the lands claimed lie in different quarter sections and the improvements of the settler are confined to a single quarter section. 32-8

70. Order of restoration that expressly prohibits settlement prior to the formal opening of such lands thereto, precludes the consideration of settlement made in violation of said order, in determining the

priorities of conflicting applicants for the same tract. 16-302

71. Action looking to recovery of title to lands erroneously certified should not be taken, where patents have issued on the claims held to have excepted such lands from the grant; the parties in such a case may be left to assert their rights in the courts. 25-440

72. The right to reimbursement under the act of March 3, 1887 (24 Stat., 550), can not be recognized if the title conveyed by the Government is paramount to the claim of the railroad company. 24-64

73. The act of April 19, 1904, providing that settlers upon lands within the indemnity limits of the grant in aid of the Chicago, St. Paul, Minneapolis & Omaha Railway, and also within the primary limits of the grant in aid of the Wisconsin Central Railroad, restored to the public domain November 2, 1891, by order of the Land Department, who were prevented from obtaining title under the public-land laws because under the decision of the Supreme Court in *Wisconsin Central v. Forsythe* the lands were held not to be excepted from the grant to the Wisconsin Central company, has no application to lands opposite the unconstructed portion of the Wisconsin Central road, which fall within the forfeiture provisions of the act of September 29, 1890. 34-388

74. Regulations of March 24, 1905, under act of February 24, 1905, relative to homestead settlers within the Mobile & Girard grant. 33-489

75. The act of February 24, 1905, relating to lands within the Mobile & Girard grant does not contemplate that an entryman who has completed his entry under the commutation provisions of the homestead law and received final certificate thereon shall, in the exercise of the privilege accorded by said act, make a second homestead entry and submit proof thereon, after due notice, as required in making an original homestead entry, nor that the lands applied for shall be a compact body of contiguous land, but where not contiguous all the land must be within the same land district, and where the aggregate of the legal subdivisions applied for exceeds the acreage embraced in the original en-

try, the entryman will be required to pay for such excess. 34-517

76. An application to exercise the privilege of transfer accorded by the act of February 24, 1905, is not required to be made by the entryman in person; nor is he required to furnish an affidavit under the act of August 30, 1890, to the effect that he has not since that date made entry of or acquired title to a quantity of land under the agricultural land laws, which, with the land now applied for, will exceed 320 acres. 34-517

77. Regulations of April 11, 1907, under act of March 4, 1907, relative to settlers within Mobile & Girard grant. 35-502

78. Where the patent issued upon a homestead entry for lands within the Mobile & Girard grant was declared invalid by the courts on the ground that the lands had passed to the company under its grant, and the holder of the homestead title thereupon purchased the railroad title, a subsequent sale of the land by him conveyed every muniment of title he then possessed, but is not of itself evidence that he thereby intended also to dispose of his right to indemnity under the act of March 4, 1907, for loss of the homestead title, in the absence of positive proof that such was the intention. 38-237

79. The right to select lands under the act of March 4, 1907, as indemnity for loss of the homestead title, was intended for the benefit of the person who lost that title, whether the entryman himself or his transferee, and not for the benefit of a purchaser of an after-acquired title. 38-237

80. Where the patent issued upon a homestead entry for lands within the Mobile & Girard grant is declared invalid by the courts, on the ground that the lands had passed to the company under its grant, and the person holding the homestead title thereafter acquires the railroad title, he is not required, as a condition to the right to select indemnity under the act of March 4, 1907, for loss of the homestead title, to relinquish or reconvey to the United States the title derived through the railroad company. 38-242

81. Where the homestead patent fails as to part of the land only, the person

holding thereunder may select an equal quantity of land to compensate for loss of that part, without being required to surrender to the United States the title to the remaining portion. 38-242

82. A selection in lieu of lands within the limits of a railroad grant in Alabama relinquished under the act of March 4, 1907, for a less quantity than the base relinquished, the deficiency not being the result of any mischance or misprision on the part of the local officers, is a waiver of the excess of base. 40-37

83. Where land embraced in a subsisting coal withdrawal was selected under the act of March 4, 1907, in lieu of land within the grant to the Mobile & Girard Railroad lost to a homestead settler, and was subsequently classified as coal, the selection can be permitted to stand only upon election by the selector to accept surface patent therefor under the act of June 22, 1910. 40-593

84. Where land selected under the act of March 4, 1907, in lieu of land within the grant to the Mobile & Girard Railroad lost to a homestead settler, is withdrawn for appraisal as coal land prior to submission of the necessary proof to support such selection, and is subsequently classified as coal, the selection can be permitted to stand only upon election by the selector to accept surface patent for the land under the act of March 3, 1909. 40-591

85. Circular of June 9, 1908, under section 6, act of May 29, 1908, relative to settlers upon Wisconsin railroad land. 36-504

86. By making entry for less than 160 acres and receiving credit thereon, under act of April 19, 1904, for residence and improvements upon a prior entry which failed by reason of the decision of the Supreme Court in the case of *Wisconsin Central v. Forsythe* holding the land to have passed to the railroad company under its grant, the entryman exhausted his right under that act, and is not entitled in connection with an additional entry, to any further credit, under section 6, act of May 29, 1908, on account of such residence and improvements. 38-271

87. The purpose of section 6, act of May 29, 1908, was to place homestead settlers

upon lands in odd-numbered sections within the conflicting limits of the railroad grants therein mentioned, who were prevented from completing title to the lands by reason of the decision of the Supreme Court in the case of *Wisconsin Central v. Forsythe*, in the same situation, relatively, as to other lands entered by them within the prescribed period, as they up to the time of the court's decision had assumed they occupied with reference to the lands settled upon within the railroad grants.

38-460

88. Where prior to actual knowledge that the land he had settled upon was not subject to homestead entry the homesteader had so far complied with the law as to have acquired a vendible interest in the land if it had been subject to such entry, the right conferred upon him by the act of May 29, 1908, would be transferable to the same extent as his interest in the land settled upon would have been; but any attempted transfer of such right by one who had not prior to such knowledge sufficiently complied with the law to acquire a vendible interest, confers no right upon the purchaser, and an entry allowed under such attempted transfer, in the name of the homesteader but in the interest and for the benefit of the transferee, is void.

38-460

89. The joint resolution of June 25, 1910, construing section 6, act of May 29, 1908, does not have the effect to validate an entry made under that section in the interest of a transferee and in furtherance of an attempted transfer of the right of the settler prior to the acquirement of a vendible interest by him.

39-221

90. The act of April 19, 1904, section 6 of the act of May 29, 1908, and the joint resolution of June 25, 1910, providing for the relief of certain homestead settlers within conflicting railroad grants in the State of Wisconsin, do not authorize such settlers to exchange the lands entered by them in Wisconsin for other public lands, or grant a scrip right, but contemplate merely that in making homestead entries of other lands the entrymen shall be entitled to credit for the time spent and improvements made on the Wisconsin lands.

39-304

II. Act of March 3, 1887.

See WAGON ROAD GRANT, 45-46.

91. Opinion of Attorney General Garland on the proper construction of sections 3, 4, and 5. 6-272

92. Circular of November 22, 1887, and modification thereof. 6-276, 544

93. Circular instructions of February 13, 1889. 8-348

94. Provisions of the act with respect to the preferred rights of settlers and purchasers reviewed by sections. 29-504

95. Procedure preliminary to suit under. 10-610

96. Proceedings to recover title under the act of 1887 taken on due application. 11-603

97. On adjustment of, demand to be made under, for reconveyance of any lands improperly passed under the grant. 6-54

98. Demand for reconveyance will not be made until after notice to the company to show cause why proceedings should not be instituted under said act. 6-544

99. In proceedings for recovery of title under, the demand for reconveyance is a statutory requirement to be made only by direction of the department. 12-210; 14-9

100. The demand for reconveyance under the act should be served personally or by registered letter upon the officers of the company or some one authorized to acknowledge service. 12-210

101. The demand preliminary to judicial proceedings for recovery of title may be made upon the present holders of the land and parties apparently having an interest therein when the original company has ceased to exist and has disposed of the land. 14-129

102. Demand for reconveyance should not include lands also embraced within entries that have passed to patent; the parties may be left to assert their rights in the courts. 13-559

103. The act confers no new authority in the matter of bringing suit to recover title, but makes that mandatory which before was discretionary. 14-132

104. The act is mandatory upon the Secretary to demand reconveyance if the grant is unadjusted and lands have been erroneously certified or patented.

9-649; 11-588, 592; 12-347; 13-559

105. It is the duty of the Secretary to readjudicate cases whenever it appears that the preemption or homestead entry of a *bona fide* settler has been erroneously canceled on account of a railroad grant.

8-318, 382

106. Decision of the General Land Office on *ex parte* proceedings, holding the land subject to the grant, does not preclude departmental action under said act.

11-226

107. The act is remedial and should be construed liberally in favor of the *bona fide* settler.

8-324

108. Plea of *res judicata* can not be interposed to relieve the company from proceedings under the act.

8-318

109. The department has authority to institute proceedings for recovery of title to lands erroneously certified whether such lands are in the hands of the original grantee or have passed to third parties.

14-120

110. The department can not consider the fact that the lands have passed into the hands of a *bona fide* purchaser in directing suit under the act.

9-221; 10-54

111. The acts of March 3, 1887, and March 2, 1896, fixing the liability to make payment for lands erroneously patented and sold to *bona fide* purchasers, do not include those who, after patents are erroneously issued and the lands included therein are sold to *bona fide* purchasers, and after the title of such purchasers has been confirmed, become purchasers at a foreclosure sale of that portion of the grant not theretofore sold.

29-38

112. It is no defense to an action under, that the patent or certification was in accordance with existing rulings of the department if such rulings are in conflict with the decision of the supreme court.

9-649; 12-348; 15-121; 18-270; 21-162

113. The act directs adjustment in accordance with the decisions of the United States Supreme Court, but constitutes the Secretary the judge to determine in each case whether a demand for reconveyance should be made; and where the particular question involved has not been passed upon by said court, the action of the Secretary can not be delayed therefor.

18-429

114. The fact that a railroad grant has been adjusted will not defeat the right of the Government to recover where an excess on account of the grant has been erroneously certified.

21-49

115. A rule to show cause why proceedings should not be instituted for recovery of title to lands erroneously certified will not be dissolved on a disclaimer of interest filed by a successor to the benefits of the grant who has pending selections thereunder.

18-270

116. The necessity for judicial proceedings to recover title where lands in excess of a grant have been certified is not obviated by matters of defense that may be set up against such action.

14-121; 21-46

117. A judicial decree awarding possession to a purchaser from the company will not prevent the department from taking jurisdiction under said act.

8-382

118. Proceedings for the recovery of title under the act not authorized where, long prior to said act, the grant had been declared by competent authority to be adjusted.

10-610

119. Departmental action for recovery of title to a tract will not be taken where the grant has been finally adjusted and the surplus lands restored to the public domain.

17-437

120. The final adjustment of a railroad grant, prior to the act, and in accordance with existing departmental construction, will not be disturbed with a view to recovering title to lands that under later rulings should have been excluded from the grant.

17-589

121. In order to sustain a suit under said act it is necessary to show that the land has been erroneously certified or patented under the grant.

8-570

122. Suit advised for recovery of unearned lands held by State of Iowa for benefit of Sioux City & St. Paul Railroad.

6-481

123. Action directed under the act, for recovery of title to lands improperly patented to the Burlington & Missouri River Railroad in Nebraska.

6-589

124. Proceedings advised for recovery of lands patented to the Oregon & California company lying within the conflicting primary limits of the grant to said company and that to the Northern Pacific east of Portland.

14-192

125. Directions given for a demand under the act on the Grand Rapids & Indiana Railroad Co., for reconveyance of lands erroneously certified thereto.

17-420

126. The act authorizes proceedings to set aside an erroneous certification where at date thereof the land was covered by a settlement claim that excepted it from the confirmatory act of March 3, 1871 (Des Moines River lands).

9-637

127. Proceedings for recovery of title should be instituted under the act in the case of certified lands opposite the uncompleted portion of the Marquette, Houghton & Ontonagon Railroad. (See 14-321.)

10-29

128. A certification or patent of land excepted from the grant is erroneous and warrants proceedings for recovery of title.

10-54, 166, 568, 575; 14-9, 364, 656

129. An expired preemption filing of record when the grant becomes effective (by definite location or selection) does not warrant proceedings for recovery of title under the act.

13-560, 637

130. Suit to set aside patent advised where issued for lands excepted by reason of preemption claim existing at withdrawal on general route and definite location (Central Pacific).

10-466

131. Covered by homestead entries at date of definite location are "erroneously" certified and subject to recovery under the act.

9-649

132. Erroneous certification to a railroad company of land previously purchased under the graduation act calls for proceedings under the act of 1887 to set aside such certification.

12-280

133. Certification of lands selected in lieu of indemnity lands relinquished under the act of June 22, 1874, is erroneous, and proceedings for recovery of title should be instituted.

10-50, 609; 15-62; 17-429

134. Taken as indemnity under act of June 22, 1874, in the absence of legal basis, subject to recovery under act of 1887.

9-649

135. An application to perfect title under said act will not defeat the right of applicant to subsequently abandon such application, and assert a claim to the land as a homestead settler.

26-351

136. The act entitles a settler to perfect entry for the entire tract originally applied for, notwithstanding the issuance of patent to him for a part of said tract.

8-382; 22-429

137. The department has jurisdiction to entertain an application for reinstatement of an entry under said act if there has been no formal adjustment of the grant.

11-358

138. The rights of the persons for whom relief is provided in section 3, act of March 3, 1887, and classified therein, must be considered in the order stated in said section.

17-353

139. Section 3 of said act does not contemplate the recognition of entries made, or claims initiated, after patent has issued under the grant and the land has been sold to a *bona fide* purchaser, as against the right of such purchaser.

26-271

140. Section 3 makes it the duty of the Secretary to reinstate the settler in all his rights to lands upon which he may have settled and for which his application may have been erroneously rejected if the settler has not abandoned the land and located another claim.

12-272

141. A homestead applicant is not entitled to reinstatement of his claim under section 3 if it appears that he in fact never actually resided on the land involved.

26-228

142. The relief provided by section 3 extends to the reinstatement of an application to enter erroneously rejected on account of a railroad grant, but is not applicable if the application to enter is properly rejected.

15-91

143. If part of an entry has been erroneously canceled on account of a railroad grant, it should, under this act, be reinstated and patent issued thereon if the settler has shown due compliance with law.

8-318

144. The provisions of section 3 warrant the reinstatement of an entry erroneously canceled on account of a railroad grant, though the judgment of cancellation was rendered in accordance with the ruling of the department then in force.

17-265

145. Section 3 authorizes readjudication where an application to file or enter has

been erroneously rejected by the local office. 8-382

146. The right to reinstatement conferred upon the settler is superior to that of a *bona fide* purchaser from the company. 8-382

147. The right to reinstatement under said act is defeated by voluntary abandonment of the claim before the grant attached. 8-588

148. An applicant for the right of reinstatement under said act will not be heard to deny that he voluntarily abandoned his entry where he has sold and transferred for a valuable consideration "all his estate, title, and interest" to the land covered thereby. 11-358

149. A relinquishment executed on notice that the entry had been suspended is not such a "voluntary" abandonment as will bar reinstatement under the act. 8-324

150. "*Bona fide* purchasers of unclaimed lands," referred to in section 3, defined. 6-272

151. Plea of *res judicata* will not bar reinstatement under section 3, if the entry was erroneously canceled on account of a railroad grant. 10-307; 12-272

152. Abandonment of land under a decision of the local office is not the "voluntary abandonment" that precludes reinstatement of the entry under section 3. 10-264, 307

153. Application under the act for reinstatement will not be refused because not in accordance with the regulations of February 13, 1889, when made prior to the formulation of said regulations. 11-359

154. Section 4 confers a preference right upon purchasers in good faith from the company. 8-570

155. An application for patent under section 4, to lands erroneously certified on account of a railroad grant must be denied, where the want of good faith, both on the part of the original purchaser and the subsequent transferees, is apparent. 23-288

156. Section 4 was not intended to protect a speculative purchase made with knowledge of the defect in the title of the railroad company. 25-117

157. The right of a purchaser to perfect title under section 4 may be exer-

cised without regard to whether purchase was made before or after the act, if in good faith and before the land was held to be excepted from the grant. 23-108

158. The act of February 12, 1896, amendatory of section 4, has no application in the matter of issuing patents to *bona fide* purchasers, or making demand of the company, where the contracts in question are fully completed prior to the act. 29-35

159. The right to patent under section 4 extends to purchasers holding under contracts of purchase, whether fully or only partially performed, if rights thereunder are acquired in good faith. 26-407

160. The right to receive patent conferred by section 4, on purchasers of railroad lands, can not be recognized, where the contract of purchase has been abrogated by a subsequent agreement, made prior to the application for the exercise of such right. (See 29-479.) 29-350

161. The right to receive patent under section 4, by one claiming under a contract to purchase, is not defeated by a supplemental contract between such purchaser and the company, made prior to the application for patent, where the intent of said supplemental contract is merely to postpone the time for making the remaining annual payments, and to prescribe the manner of adjusting the rights and obligations of the parties under the original contract, in the event of failure of the company's title by reason of a decision in a suit then pending, but not commenced until after the original contract was entered into, if the adjustment so contemplated has not been made. 29-479

162. The right of a purchaser from a railroad company to a patent under section 4 is not barred by the fact that at the date of his purchase the land was settled upon and occupied by another, and that such fact was known to the purchaser, where, at the time of such settlement and purchase, the land was included in an outstanding patent, issued many years prior thereto, for the use and benefit of the company. 29-504

163. The good faith of a purchaser who is asking for confirmatory patent under section 4 is not affected by the fact that there were settlers on the land at the time

of his purchase who were attempting to claim the same under the homestead law, and that the purchaser knew of their presence there, where the lands at such time were not subject to homestead settlement or entry, but were included in outstanding patents, issued for the use and benefit of the company, and the defect in the company's title as ultimately determined by the supreme court was not affected by the presence or absence of settlers or settlement claims. 30-283

164. The right to a patent conferred by section 4 upon purchasers who are without knowledge of the failure of the company's title, is a property right that vests in the *bona fide* assignee of such a purchaser, and entitles said assignee to the benefit of said act. 29-294

165. No right to a confirmatory patent under section 4 can be based on a contract of purchase that has been canceled by the company for failure to comply with the terms thereof. 29-666

166. A purchase in good faith of patented railroad land, based on a contract entered into after the issuance of patent, entitles the purchaser to a patent under section 4, if it subsequently appears that the land was erroneously patented under the grant, and the patent is set aside. 26-271

167. A purchase of land from a railroad company must be held to be in good faith, and entitle the purchaser to a patent under section 4, if the title thereto is thereafter declared to be in the United States on account of the company having received, exclusive of said tract, an amount of land in excess of its grant, where, prior to said purchase, the land had been earned by construction of the road, and had been patented to the State, and where at the time of such purchase the State is holding such title. 26-407

168. On the partition of lands between the Chicago, Milwaukee & St. Paul and the Sioux City & St. Paul, the two companies agreed to a mutual exchange of deeds conveying the right of way where the line of either road crossed the lands awarded to the other; and title so acquired by the Chicago, Milwaukee & St. Paul company, prior to any action taken by the Government for the recovery of

title, gives said company the status of a purchaser in good faith. 29-294

169. A remote purchaser in good faith of lands erroneously certified on account of a railroad grant, who buys without any knowledge of defect in the title thereto, is entitled to patent under section 4, irrespective of any question as to the good faith of the immediate purchaser from the company. 27-707

170. Under the grant of May 12, 1864, the company earned, by construction, title to certain lands that were patented to the State, but not to the company; subsequently said company set apart a right of way for its road across said lands, and sold its road, together with said right of way, and thereafter the title to said lands, so earned, was recovered by the United States in a suit to quiet title to lands erroneously patented to the State: *Held*, That under section 4 the purchaser of said railroad and right of way is entitled to a patent for the lands embraced in said right of way. 27-717

171. In determining whether an applicant for patent under section 4 is a purchaser in good faith, the department may properly consider certified copies of deeds tendered in evidence, even if said deeds were irregularly placed of record, and hence not conclusive as articles of conveyance. 27-707

172. Lands falling outside the limits of a grant on the establishment of the end lines of the road, but certified to the use thereof, and sold by the company to purchasers in good faith, are of the class of lands the purchase of which is confirmed by section 4. 19-148

173. The right to issue patent under section 4 does not arise until the land shall have been legally determined to belong to the United States. 6-272

174. A patent containing proper recitals and descriptions, may issue, under section 4, irrespective of the fact that the acreage embraced therein is less than a legal subdivision. 29-294

175. When a company has conveyed land improperly patented to it, and received payment therefor, the right of entry by the company's grantee, under section 4, will not be recognized while the

patent to said land, in the name of the company, is outstanding. 20-505

176. The right to perfect title under section 4 given to the *bona fide* purchaser from a railroad company extends only to cases where the land was erroneously certified or patented to the company. 9-199

177. A congressional forfeiture for failure to construct the road, is also, in effect, a declaration by Congress that certified lands so forfeited were "erroneously certified," and the department will not question such declaration in construing the provisions of section 4. 23-310

178. A forfeiture of the unearned lands within a grant requires an adjustment of the grant in order to determine what lands were restored to the public domain by the act of forfeiture, and the determination of such matter is an "adjustment" within the meaning of section 4. 23-310

179. One who has contracted to sell land purchased from a railroad company, to which title subsequently fails, is a proper party to perfect title under section 4. 14-18

180. The right of a purchaser to perfect title under section 4 is intended to cover cases where the lands were unearned and erroneously patented or certified. 14-18

181. The right to perfect title under section 4 is not defeated by the fact that the purchaser is the president of the company and trustee for the bond owners, if there is no evidence of bad faith on the part of said purchaser as against the company or said bond owners. 14-18

182. A purchase of railroad lands by one who is at such a time a director in the railroad company, trustee for the bondholders in the mortgage of the railroad lands, and party defendant as such trustee, in a pending suit instituted by the United States to recover title to the lands, is not a purchase in "good faith," and no right to a confirmatory patent under section 4 can be predicated on such purchase. 29-666

183. A corporation organized and existing under the laws of a State is in contemplation of law a citizen of the United States, and as such entitled to invoke the confirmatory provisions of section 4. 19-148; 29-294

184. The grantee of a company to which land has been improperly patented may reconvey title to the company, and the company to the Government, and so enable the department to issue patent to said grantee under section 4. 20-505

185. The agreement of a transferee of the Mobile & Girard Railroad Co. to accept under section 8, act of September 29, 1890, a *pro rata* share of the lands earned by said company, and consummation of such agreement, do not operate as a waiver of the right of said transferee to subsequently apply for relief under section 4, as to lands purchased from said company but not secured through said *pro rata* adjustment. 23-288

186. No time having been fixed within which purchasers from the Mobile & Girard company, of lands erroneously certified or patented to the company on account of the grant made to aid in the construction of its line of road, or the heirs or assigns of such purchasers, should make proof of their purchase, in order to bring their claims within the confirmatory provisions of section 4, laches can not be imputed generally to such purchasers, their heirs or assigns, for failure to assert their rights promptly after the adjustment of said grant; but as to such of said lands as have been restored to the public domain and entered under the public land laws, and final proof submitted on such entries after the publication of notice as required by law, without timely objection by such purchasers, their heirs or assigns, they are estopped from claiming the benefits of said section. 33-197

187. The purchasers of the capital stock of a company that is applying for patent under said section 4, are not purchasers of the land within the meaning of the statute. 25-117

188. A timber-culture entry of a tract made by a *bona fide* purchaser thereof under section 4 can not be held an abandonment of his claim under said act; it appearing that such entry was only intended to be utilized in event of failure to secure title through his purchase. 29-336

189. Right of purchase under section 5 should not be passed upon in the absence of an application. 22-669

190. Purchasers under section 5 are not required to establish and maintain residence on the land purchased. 21-138

191. The proof required of a purchaser from a railroad company who perfects title under section 5 may be made by one acting under a special power of attorney. 21-293

192. Method of procedure and proof required under application for the right of purchase as provided in section 5. 8-27, 348

193. Application to purchase under section 5 must be presented in accordance with departmental regulations. 11-535

194. On publication of notice of intention to purchase under section 5, an adverse claimant is entitled to special notice. 15-174

195. Application to purchase under section 5 made by one claiming under a railroad company can not be entertained until it has been finally determined that the land is in fact excepted from the grant. 11-629; 31-254

196. It is not necessary, on the part of a purchaser from a railroad company, to invoke the protective provisions of section 5, until such time as it has been authoritatively determined that the title of the railroad company has failed. 29-633

197. An application to purchase under section 5 may be entertained at any time after it is ascertained that the land is excepted from the grant, without waiting for final adjustment of the entire grant. 23-508

198. The right of purchase under section 5 is limited to conditions presented at the time of or prior to final adjustment of the grant, and does not extend to a purchase from a railroad company after such adjustment and the restoration of the land to settlement and entry. 25-151

199. An application to purchase under section 5 lands erroneously patented to a railroad company can not be entertained until reconveyance of title has been secured. 11-590, 603

200. Section 5 of said act is not repealed by the act of March 2, 1889 (25 Stat., 854). 19-9; 22-558

201. Lands within railroad indemnity limits, not required in the final adjustment of the grant, nor selected on behalf

of the same, but sold as part of said grant to purchasers in good faith, are of the character subject to purchase under section 5. 19-136

202. Land subject to indemnity selection, and sold to a purchaser in good faith, as part of the grant, may be purchased under section 5, though no selection of the land was made by the company. 23-508; 24-42

203. The right of purchase under section 5 extends to indemnity lands as well as those within granted limits. 6-272; 22-587; 23-508; 24-42

204. Limitations of right of purchase under section 5 specified. 6-272

205. The right of purchase under section 5 is not defeated by an adverse application to enter made after the act, nor by an application to enter pending at the passage of said act under which no settlement right is alleged. 19-272

206. Purchasers under section 5 of lands covered by an expired preemption filing at the date of the attachment of rights under the grant to the Northern Pacific, and for that reason erroneously held to have been excepted from the grant, are not claimants adverse to the company, and their claims are not subject to adjustment under the act of July 1, 1898. 31-254

207. Section 24, act of March 3, 1891, was not intended to authorize the President, in establishing a forest reserve, to extinguish an existing right to purchase granted by section 5, act of March 3, 1887. 32-77

208. Section 5 does not confer upon a purchaser a vested interest in the land, but merely a privilege or option to acquire title thereto, and if this privilege be not asserted and perfected within a reasonable time it is no bar to appropriation of the land by the Government for public uses. 37-100

209. The exceptions to the right of purchase conferred by section 5, in the first proviso thereto, are in favor of occupants, and in the second proviso in favor of persons who had made settlement. 19-524

210. The right of purchase under section 5 is not defeated by a prior adverse application to enter under which no settlement right is asserted. 24-42

211. A claim resting upon an application to enter is not protected under either of the provisos to section 5, as the terms thereof provide only for the protection of settlement rights.

17-307;

20-63; 21-26, 557

212. The right of purchase under section 5 is not defeated under the first proviso if at the date of the sale by the railroad company the land was not in the *bona fide* occupation of adverse claimants under the preemption or homestead laws, nor under the second proviso by an application to enter under the homestead law on behalf of one who does not allege a settlement right.

17-314

213. Right of a grantee of a railroad company to purchase under section 5 not defeated by an application to enter pending at the passage of said act, but subsequently abandoned.

16-66

214. The right of a purchaser to perfect title under section 5, where the title of the company fails, takes precedence over a subsequent adverse timber culture application.

23-543

215. The successful contestant of an entry acquires no preference right as against the right of a *bona fide* purchaser under section 5.

23-508

216. A settler who successfully contests the adverse claim of a railroad by showing that the land was excepted from the grant does not thereby acquire a right of entry as against the privilege of a prior *bona fide* purchaser from the company, in open possession of the land, to perfect title under section 5.

23-180

217. A settlement claim acquired after the passage of said act, and subsequent to sale of the land by the company, will not defeat the right of the purchaser, or his transferee, to perfect title under section 5.

20-227, 278; 22-32.

558; 23-216; 29-633

218. A settlement claim acquired with full knowledge of an adverse right asserted under a purchase from a railroad company, will not defeat the right of purchase under section 5.

22-549, 682

219. One knowing that land is claimed by a railroad company under its grant, and having constructive notice of the sale thereof, as shown by a recorded deed, can not thereafter initiate any right to such

land which will defeat the right of the purchaser from the company to perfect title under section 5.

29-633

220. A settlement right acquired after December 1, 1882, and prior to the act, defeats the right of purchase under section 5.

22-93

221. The second proviso to section 5 applies only to lands settled upon in good faith after December 1, 1882, and prior to said act, and an application to enter filed within said period will not except the land from the right of purchase conferred upon transferees by said section.

16-273

222. In holding that the right of purchase from the Government under section 5 is not restricted to cases in which the purchase from the company was made prior to the act, but that the protection extended to settlers in the second proviso is limited to settlement made before the act, the department recognizes the remedial purpose of said section, and the rule of construction that the proviso, being a limitation of the remedy, must receive a strict construction.

25-194

223. The second proviso in section 5 applies only to lands which, at the passage of the act, had been settled upon after December 1, 1882, by parties claiming in good faith a right to enter the same under the settlement laws, in ignorance of the rights or equities of others.

11-607;

14-237; 19-9; 22-587; 25-77

224. The right of the purchaser under section 5 is defeated by the settlement of another made after December 1, 1882, whether the purchase was made before or after said date.

6-750

225. A settler claiming the benefit of the second proviso to section 5 is not entitled to plead want of notice as to adverse claims through the company, where at the time of his settlement he was apprised of the company's selection and the record at such time disclosed a conveyance of the land by the company.

25-194

226. A settlement right acquired after December 1, 1882, defeats the right of a purchaser from the company.

9-199; 14-35

227. The right of a settler to perfect title under the proviso to section 5 defeats

the claim of a purchaser from the company under the body of said section.

14-554

228. A settler who enters into possession of a tract under a claim through a railroad company, but subsequently, and after December 1, 1882, and prior to the act of 1887, renounces such claim and asserts a right under the settlement laws, is entitled to perfect his claim under the second proviso to section 5, as against an adverse applicant under the body of said section, through whom the settler first derived possession.

17-93

229. Settlement on land withdrawn for the benefit of a railroad company, in violation of an order expressly prohibiting such settlement until the formal opening of said lands thereto, confers no right that can be asserted as against the right of purchase under the body of section 5.

18-176

230. The right of purchase under section 5 is not defeated by a settlement claim acquired by a willful trespass on the possessory rights of the applicant.

18-528

231. Settlement upon and entry of lands covered by an existing railroad indemnity withdrawal will not operate to defeat the right of a prior purchaser from the railroad company to perfect title under section 5.

18-502

232. The right of a purchaser from a railroad company to perfect title under section 5, for the protection of his grantees, is not defeated by an inchoate claim under a warrant location, where the locator by his laches justified said purchaser and his grantees in the belief that the claim under the location had been abandoned.

21-374

233. Section 5 does not confer upon a purchaser from a railroad company, where the title of the company fails, the right to purchase from the Government land known to be valuable for mineral.

24-172

234. The right of purchase under section 5 will not be defeated by a mineral claim, unless it appear as a present fact that the land is more valuable for mineral than for agricultural purposes.

21-507

235. Where lands otherwise within section 5, and not known to be mineral at the time of purchase from the company, are subsequently found to be mineral, they

are not for that reason excepted from the right to purchase granted by said section.

32-77

236. One who with knowledge of the exception of mineral lands from the grant to the Southern Pacific purchases from said company lands within the limits of its grant, known to be mineral at the date of such purchase, is not a purchaser in good faith within the meaning of section 5.

31-325

237. If such lands were not known to be mineral at the time of their purchase, no subsequent discovery of minerals thereon could affect the question of the good faith of the purchase.

31-325

238. The right of purchase under section 5 is limited to "the numbered sections prescribed in the grant," and therefore can not be exercised to secure title to even-numbered sections selected under the indemnity provisions of the act of June 22, 1874.

23-387

239. The provisions of the act of June 22, 1874, and section 5 are remedial in character, and should receive a liberal construction, and be construed *in pari materia* with the original granting act in case of an application to purchase under said section 5. It must therefore be held that lands in even-numbered sections selected under the act of 1874 are from the time of such selection the "numbered sections" of the grant, as such phrase is used in said section 5, and may be purchased thereunder if said indemnity selection proves invalid.

25-77

240. An applicant to purchase under section 5, who, at the time of his purchase from the company, had knowledge that there were conflicting claims to the lands and that the company's claim was being contested, is not necessarily chargeable with bad faith because of such knowledge.

31-325

241. The right to perfect title under section 5 may be properly accorded one who appears to have bought the land from a railroad company and paid the agreed price, even though no deed has been executed by the company.

21-507

242. That a deed of the land purchased from a railroad company is not delivered until after the act does not defeat the right of such purchaser, or his assignee,

to perfect title under section 5, if the sale by the company was in fact made prior to the act. 19-9

243. The right of one holding under a contract of purchase from a railroad company to perfect title under section 5 is not affected by the fact that said contract is neither acknowledged nor recorded; nor can the subsequent purchase of a tax title to said land by the applicant be regarded as such an abandonment of his contract as would defeat his right of purchase under said act. 22-216

244. The right of a qualified transferee to purchase under section 5 is not affected by the fact that his purchase was made after the passage of said act if the land was originally purchased in good faith from the company. 17-307; 20-227; 21-557

245. In exercise of the right to perfect title under section 5 it is not material whether the purchase from the company was made before or after the act, if made in good faith, believing the title to be good, and before the land was held to be excepted from the grant. 22-238, 549; 26-252

246. The right of purchase under section 5 can not be exercised by one who has rescinded and surrendered his contract of purchase made with the railroad company. 19-503

247. There is no right of purchase under section 5 on the part of one who has assigned to the railroad company the contract of purchase under which he claims, and surrendered possession thereof in accordance with such assignment. (See 30-288.) 29-677

248. The right of purchase accorded by section 5 is not lost by surrender to the railroad company of the contract of purchase, for the purpose of securing a return of the purchase money, where there was in fact no assignment, and no intention to make an assignment, to the company, of the purchaser's interest in the land, and where he continues to assert his claim thereto. 30-388

249. After the holder of a contract of purchase from a railroad company surrenders the same to the company and receives the purchase money, he has no such right remaining as can be assign-

ment to another invest him with a right of purchase from the Government under section 5. 37-237

250. Right of purchase under section 5 not limited to immediate purchaser from the company, but extends to any *bona fide* purchaser of the land who is qualified in the matter of citizenship; the qualifications of his grantor or intervening purchasers are not material. 11-229; 16-273

251. A covenant in the deed under which a transferee holds, to the effect that "any and all additional title * * * which may inure to the said first party, by reason of any acts of Congress or decisions of the Interior Department of the United States Government, shall inure to the said second party," will not be held to defeat his right to perfect title under section 5 as a *bona fide* purchaser. 21-575

252. The right of purchase under section 5 can not be recognized if the *bona fide* character of the conveyance, under which the applicant claims, is not established. 24-482

253. The right of a purchaser from a railroad company to acquire title under section 5 is not dependent upon the good faith of the company in making the sale. The question of good faith in the transaction relates solely to the purchaser's connection therewith. 23-301

254. The fact that a railroad company may have known of the existence of a settlement claim that covered a tract of land at the date of its sale by the company is not material in determining the right of purchase under section 5, if the purchaser was not at such time apprised of said claim. 26-252

255. A purchaser from a railroad company of land certified on account of its indemnity grant, but in the actual possession of a settler, and embraced in his pending application to enter at the time of such certification, takes with notice of such possession and of the rights of the settler in the premises. 29-434

256. A transferee claiming the right to perfect title under section 5 must show that the purchase from the company was made in good faith. 20-227

257. Right of purchase under section 5 is not dependent upon the qualifications of the immediate grantee of the company, but

may be exercised by any subsequent *bona fide* purchaser who possesses the requisite qualifications. 16-273; 17-397

258. One who purchases with notice of a pending homestead claim is not himself a *bona fide* purchaser in contemplation of section 5, but if his grantor holds under a *bona fide* purchase, made prior to said homestead claim, such purchaser succeeds to the right of his grantor and may perfect title under said section. 26-228

259. A person entitled to purchase under section 5, upon being advised of an adverse claim to the land under the homestead law, should make prompt assertion of his right of purchase by filing his application, and failure to make timely assertion of claim will bar his right of purchase as against the adverse claimant in possession. 31-433; 33-506

260. The fact that a purchaser had not, at date of purchase, filed his declaration of intention to become a citizen, will not defeat his right to perfect title under section 5, where prior to date of his application under said section such declaration was duly filed. 20-142

261. A married woman, an alien by birth, whose husband has declared his intention to become a citizen, occupies the status of one who has filed his declaration of intention, and, in respect to citizenship, is qualified to perfect title under section 5. 18-528

262. A corporation organized under the laws of a State or of the United States, that has purchased in good faith lands sold as part of a railroad grant, is entitled as a "citizen" to perfect its title to said land under section 5. (See 19-140.) 19-141; 22-587; 26-503

263. The right of purchase under section 5 is intended for the relief of *bona fide* purchasers from a railroad company where the title of the company fails by reason of the land being excepted from the grant. 12-247; 22-587; 23-508

264. Lands within the common granted limits of the Chicago, St. Paul, Minneapolis & Omaha Railway and Wisconsin Central Railroad restored to the public domain on adjustment of the former grant, and under the ruling then followed that said lands were excepted from the latter grant by the indemnity withdrawal on behalf

of the Omaha company and sold as a part of the grant to said company prior to said adjustment, may be purchased from the Government under section 5, the right of the Central company having been forfeited by the act of September 29, 1890. 22-558

265. The privilege of purchase under said act extends only to cases where the right of the settler and *bona fide* purchaser from the company has been defeated through an erroneous disposition of the land. 14-35

266. The speculative value of the land will not be considered in determining the *bona fides* of the purchaser, especially where such point is raised by a stranger to the original transaction. 23-216

267. The fact that a purchaser from a railroad company does not, prior to his purchase, examine the records of the Land Department in order to ascertain the character of the company's title, is not sufficient to defeat his right of purchase under section 5 as a "*bona fide* purchaser." 23-508

268. Any *bona fide* purchaser from the company, or one taking thereunder, who has transferred the land, may perfect title under section 5 where the claim of the company fails. 14-237

269. On application to perfect title, under section 5, to land excepted from a railroad grant by preemption filings, the good faith of the applicant's purchase from the company is not impugned by the fact that prior to said purchase he had been register of the land district in which the lands were situated, and must therefore have known that said lands were excepted from the grant by said filings, where it appears that during said period the department did not recognize a filing as sufficient to work an exception. 23-216

270. The status of an applicant is not affected by the fact that prior to his purchase from the company he had been receiver of the land district within which the land is situated. 24-409

271. The right to perfect title under the first clause of section 5 is intended for those who have in good faith paid for a title believed by them to be good, and the fact that such purchaser holds under a

quitclaim deed will not exclude him from the benefits of said section. 14-498;

23-216; 24-409

272. The purpose of section 5 was to protect all persons who had parted with a valuable consideration, whether in money or other property, in payment for lands to which the company could give no valid title. 23-301; 24-409

273. The good faith of a purchaser from a railroad company is not affected by the fact that he is a stockholder therein, nor by the further fact that he gave preferred stock of the company in exchange for the land. 23-301, 508

274. The sale of the standing timber on land by a railroad company is a sale of an interest in the land, and the purchaser of such interest (the substantial value of the fee) is entitled thereby to acquire the entire title to such land by paying the Government price therefor, as provided by section 5. 18-176;

19-141; 20-142, 227

275. Directions given for the disposition of applications to purchase lands formerly withdrawn for the Chicago, Minneapolis & Omaha Railway Co. 11-607

276. Patent may issue under section 5 for tracts purchased without respect to the acreage embraced therein, even though it be less than a legal subdivision; but if a survey is necessary, the expense must be borne by the applicant. 16-273; 24-410

277. The erroneous denial of an asserted right of purchase under section 5, and recognition of intervening adverse claims, will not preclude subsequent supervisory action on behalf of the applicant if the lands involved are yet within the jurisdiction of the department. 22-459

278. Lands having been certified under the act of June 3, 1856, on account of the Wills Valley grant, in excess of the amount granted, and suit having been instituted to recover such excess, no further certifications of lands will be made under said grant, even though they are of the prescribed number within the place limits and free from adverse claims or rights at the date of the definite location of said road. Where such lands have been sold, however, as a part of the grant and before the ascertainment of such excess, it

must be held that the equity of the purchaser is superior to the right of the United States to retain said lands on account of the excess in certifications; and by way of assurance to the purchaser's title under the railroad grant, his purchase of the lands under section 5 may be permitted to stand. 32-113

279. Adverse claims asserted to these lands under the homestead and preemption laws denied, for the reasons (1) that although the department has found that an excess exists in approvals made on account of the Wills Valley grant, the question is pending in the courts, and the granted sections within the place limits not certified on account of the grant have never been restored to entry; (2) that the settlements alleged to have been made in 1882 were not because of any decision of this department holding the lands in question excepted from the grant and subject to settlement; (3) that upon the facts shown it would seem that the United States is without jurisdiction to entertain claims thereto under the settlement laws; and (4) that even should these lands be held excepted from the Wills Valley grant and subject to the provisions of the act of 1887, the showing made in support of claims asserted thereto under the settlement laws is not sufficient to defeat the right of purchase under the fifth section of the act. 32-113

280. An abandoned donation claim, though uncanceled of record at the date of the definite location of a railroad grant, does not except the land covered thereby from the operation of the grant; and until it is determined by the Land Department that the land is excepted from the grant, a purchaser thereof from the company is not entitled to the right of purchase accorded by section 5. 38-259

III. Act of March 2, 1889.

281. The lands declared forfeited by said act and restored thereby to the public domain, became subject to entry immediately upon the passage of said act. 19-170

282. Declaring forfeited certain lands granted to Michigan and resuming title thereto operates to vacate a former cer-

tification of said lands and restores them to the public domain, subject to the first legal application therefor. 16-368

283. Does not confirm entries of land included within the actual adverse occupation of a *bona fide* preemtor on May 1, 1888. 13-673

284. The confirmation of a cash entry, as provided for in said act, is not defeated by the occupancy of a preemption claimant who was an alien at date of settlement, and did not declare his intention to become a citizen until after May 1, 1888. 22-360

285. A preemption settlement initiated and maintained with full knowledge of a prior soldiers' additional entry covering the same land is not such a *bona fide* claim as would serve to defeat confirmation of such existing entry by section 3 of said act. 32-393

286. Instructions of December 30, 1889, with respect to cash entries of odd-numbered sections within the limits of the Ontonagon & Brule Railroad grant. 13-423

287. A settlement on land included within the forfeiture act of March 2, 1889, and existing at the date of said act becomes a lawful claim, and as such is excepted from the operation of the act repealing the preemption law. 15-482

288. The act confers a superior right upon preemption and homestead claims, irrespective of any fact whatever, save that the claim must be a *bona fide* one, subsisting on the first day of May, 1888, and must arise out of actual occupation of the land under color of the law. 18-403; 19-110

289. In the adjustment of conflicting settlement claims for lands restored by the act acts of settlement performed before such restoration may be properly considered in determining priorities. 18-392

290. A settlement on lands restored to the public domain by the forfeiture act, after the passage of said act, and prior to the time when such lands were opened to entry, is protected as against the intervening entry of another, if the right of such settler is asserted within the statutory period. 26-288

291. On the opening of railroad lands forfeited by said act, existing settlement

rights take precedence over applications to enter filed at the hour of opening; and as between settlers on said lands priority of settlement may be considered. 27-569

IV. Act of September 29, 1890.

292. Instructions under the forfeiture act. 11-625

293. Circular under, with special instructions as to Sioux City & St. Paul, Northern Pacific, and Gulf & Ship Island roads. 12-3

294. Circular under act of January 23, 1896, amending section 3. 22-204

295. Lands opposite the unconstructed portion of the Northern Pacific road from Wallula to Portland, forfeited by the act and within the limits of The Dalles wagon road, will not be suspended from entry pending judicial action that may be taken on behalf of said wagon road. 16-459

296. Directions for disposition of applications to enter pending at the passage of the forfeiture act (Wisconsin Central). 12-188

297. Notice of intention to purchase under section 3 must be filed in the local office by applicants within 60 days after publication of the regulation of March 31, 1891. 12-398

298. Under the treaty of June 9, 1855, the department is authorized to withdraw from entry such lands as may be necessary to protect the Indians in the enjoyment of their ancient fishing privileges, and lands so withdrawn, falling within the limits of the forfeiture act, are not subject to purchase thereunder. 20-284

299. *Bona fide* purchasers of lands certified in advance of construction, take good title where such sale is authorized by the grant, and the title to such lands thus held is not affected by the forfeiture act. 12-253

300. The right of purchase accorded settlers on forfeited lands by the act, can not be exercised by one who has not theretofore settled on such land and has no interest therein except as the tenant of another. 15-468

301. Forfeited by, is subject to school indemnity selection. 23-423

302. Restored by, are not subject to entry under the timber and stone act.

15-292

303. Section 2 should not be construed as limiting the disposition of the forfeited lands to the homestead law alone, and consequently prohibiting a timber-culture entry of said lands. Departmental circular of December 24, 1890, modified. 19-575

304. Are by the forfeiture act taken out of the operation of the preemption law, and settlers on such lands are required by the amendatory act of February, 1891, to assert their homestead claims within six months after issuance of instructions.

16-50

305. The forfeiture declared by the act was complete on its passage and opened to settlement immediately the lands designated therein.

17-345; 23-58, 346

306. A settlement after the forfeiture act, and prior to the time the lands were open to entry, is protected as against the intervening entry of another, if asserted within three months from the time said land is subject to entry.

17-345

307. The preferred right of entry accorded by section 2 to actual settlers in good faith on railroad lands forfeited by said act defeats the right of a subsequent settler to purchase said lands under section 3 of said act.

19-571

308. Priority of settlement and possession at date of the act determines the rights of conflicting claimants under sections 2 and 3.

21-340, 349

309. A settler on lands forfeited by said act whose settlement was made prior to the act, and within an unimproved inclosure, including a large body of other lands, maintained by adverse claimants, has a preferred right under section 2, as against the right of purchase under section 3 on the part of said claimants holding under the railroad company.

20-242

310. The rights of an actual settler at date of the act relate back, under section 2, to the date of his actual settlement on the land.

17-385

311. The preferred right to make a homestead entry of forfeited lands is conferred by section 2 upon settlers in good faith on such lands at the date of the act.

22-392

312. A homestead entry made under section 2 can not be commuted until after 14 months' residence and cultivation from the date of entry, if such entry is made subsequently to the act of March 3, 1891, amending section 2301, R. S.

19-114

313. An actual settler on lands embraced within the forfeiture act at the date of said act is entitled to a preferred right of homestead entry, and if he die without having made such entry, the right survives to his widow, who was also at such time residing on said land.

25-522

314. An applicant for the preferred right under section 2, who fails to appeal from rejection of his application, loses whatever rights he may have been entitled to under said act; and it follows that the heir of such an applicant can have no rights in the premises.

20-459

315. An Indian half-breed may exercise the homestead right conferred by the act of July 4, 1884, on railroad lands forfeited and restored to entry by said act.

20-300

316. A settler is entitled under section 2 of said act, as amended by act of February 18, 1891, to a preferred right of entry for six months from promulgation of instructions relative to restoration of said lands.

15-297

317. The preferred right to enter forfeited railroad lands, accorded under section 2, as amended by the act of February 18, 1891, begins to run from the date instructions are issued authorizing applications to be made for such lands.

25-420

318. The preferred right accorded settlers by section 2 not defeated through the settler's improvements being, through mistake, not on the land claimed, nor by the intervening claim of another who makes no inquiry in the vicinity of the land as to its actual status.

15-410

319. A person claiming a preferred right of entry under section 2 must show actual settlement at date of the act, and qualification at such time to make homestead entry.

18-489

320. The preferred right of entry accorded by section 2 to "actual settlers" at the date of the act is dependent upon acts of settlement followed by the establishment and maintenance of residence in good faith.

18-490; 19-217

321. An allegation of settlement with a view to purchasing from a railroad company, made on behalf of an applicant, is disproved by the fact that the alleged settler entered the tract involved under the timber-culture law. 21-135

322. The right of an actual settler as against another to make homestead entry under section 2 is limited to the land in the technical quarter section on which his improvements are situated. 16-248

323. Where a settler makes homestead entry under section 2 and thereafter, through mistake, relinquishes said entry, and purchases the land under section 3 of said act when in fact not entitled to make such purchase, the entry may be reinstated with the right to treat said purchase as a commutation thereof, or perfect said entry in the regular manner. 25-522

324. The right of purchase conferred by section 3 is in contemplation of law a preemption right. 22-131

325. The right to purchase is secured to persons thereto entitled between the dates of September 29, 1890, and January 1, 1897, and no adverse claim can attach between said dates. 23-415

326. The act of June 25, 1892, amending the forfeiture act, extends the period within which "actual residents" under section 3 are entitled to the right of purchase until September 29, 1893. 15-298

327. The right of purchase under section 3 can not be exercised if not asserted within the statutory period. 22-127

328. The time within which the right of purchase under section 3 may be exercised is fixed by statute and can not be extended by the Land Department. 29-436

329. The period within which the right to purchase could be exercised under section 3 as extended, expired January 1, 1897, and by failure to exercise the right within that period, rights under a homestead entry of record at that date attached absolutely as against such right of purchase; and nothing in the act of February 18, 1897, reviving and extending the right of purchase accorded by said section, can be so construed as to in anywise interfere

with any adverse claim which may have attached prior thereto. 30-492

330. The right of purchase granted by section 3 to persons who settled with intent to purchase from the company is personal, and not transferable. 22-255

331. The right of purchase accorded by section 3 to those "who may have settled said land with *bona fide* intent to secure title thereto by purchase from the State or corporation" can not be exercised by one who had not established residence on such lands prior to said act. 17-498; 19-486

332. Persons who at the passage of said act were not in possession of lands opened to entry thereby, or had not settled thereon, secured no rights under section 3. 19-217

333. The possession of land lying within the overlapping limits of The Dalles Military Wagon Road Co. and the Northern Pacific Railroad Co., and covered by the forfeiture act, acquired with a view to purchasing said land from the wagon road company, does not entitle the holder to perfect title thereto under the second clause of section 3. 22-442

334. The use of a tract for grazing purposes, in connection with adjacent land upon which applicant resides, does not give him the preferred right to purchase as a settler under section 3. 17-542

335. Under the amendatory act of January 23, 1896, residence is not required to be shown in support of an application to purchase under section 3, if the land has been cultivated and otherwise improved. 22-386; 23-26

336. The amendment of section 3, by the act of January 23, 1896, whereby actual residence as a prerequisite to the right of purchase is not required if the lands have been fenced or improved, can not operate to divest the right of an intervening homesteader acquired under the original act. 26-251, 633

337. The amendatory act of January 23, 1896, does not authorize an entry where the land is within a large inclosure constructed and maintained by several persons for their use in common, and the only improvements are of a temporary character. 27-337

338. Lands contiguous to a homestead entry are not subject to purchase by the homesteader as a settler, as he is not entitled to claim settlement at the same time under both the homestead law and said act. 22-60

339. By the terms of the amendatory act of January 23, 1896, the right of purchase under section 3, conferred upon persons who settled with intent to buy from the company, is not defeated by the noncontiguity of the tracts applied for. 22-290

340. The right of purchase accorded by section 3 to persons holding under a deed, written contract, or license from a railroad company, is limited to those whose evidence of title was executed prior to January 1, 1888. 21-193

341. The right of purchase under section 3, accorded to persons in "possession," is limited to those holding under deed, written contract with, or license from the railroad company. 19-486

342. The provisions of section 3, according a preference right of entry to persons in possession under "license" from a railroad company, extends to one who takes possession of and improves such lands under the circular invitation of the company, and in accordance with said circular applies to purchase said lands. 18-337, 575

343. The records of the department disclose that the Southern Pacific issued a circular inviting settlement upon its lands, and judicial notice of such fact may be taken in the disposition of cases involving the right of alleged licensees thereunder. 22-229

344. The mere possession of railroad land can not be regarded as occupancy under a license within the meaning of said act. 21-193

345. Settlement without an application to purchase from the company prior to January 1, 1888, can not be regarded as giving the status of "licensee," under section 3, to one who alleges that such settlement was induced by a circular letter of the company. 21-392; 22-117

346. One claiming under an alleged license, on the ground that an application to purchase the land from the company

had been made, must also show, to make his claim good, the acceptance of said application. 21-193

347. Neither the circular issued by the company inviting settlement, nor the application of the settler thereunder, taken alone, constitutes a license; but the two, when taken together, establish the right of the settler as a licensee. 22-229

348. The preferred right of purchase accorded by section 3 to persons in possession under "license" can not properly be asserted by one who has not applied to purchase from the company, or who does not show any authority from the company to take possession of the land. 18-571

349. The right of a licensee under section 3 is assignable, and may be exercised by an assignee who is in possession of the land by an agent. 18-337

350. An application for the right of purchase on behalf of a partnership firm, made in accordance with the circular notice of a railroad company, may be properly the subject of assignment to one of the members of said firm, through agreement of the parties, and thus confer upon such assignee the status of a licensee. 22-138

351. The provisions of said forfeiture act do not authorize an executor to exercise the right of purchase. 19-42

352. A devisee is not entitled to purchase under section 3, if he is in possession, under a purchase in his own right, of the full amount of lands allowed to any one person under said act. 19-42

353. The right to purchase under section 3, by persons holding under license from a railroad company, is inheritable, and may be exercised by an administrator for the benefit of the estate. 19-449; 20-313

354. The right of purchase accorded a licensee by section 3, is transferable and inheritable, and may be exercised on behalf of the heirs of licensee. 22-229

355. Joint possession of railroad land included within a common inclosure does not confer a right of purchase under section 3 if such possession is without license from the railroad company. 19-542

356. The right of purchase accorded a licensee under section 3 is not affected by

an expired lease of occupant's right under which no adverse claim is asserted.

21-515

357. No right is acquired by a contest against an entry of lands reserved on account of a railroad grant, that will defeat the right of the entryman, who is in possession as a licensee, to purchase the land under the provisions of section 3, and the amendatory act of January 23, 1896.

24-406

358. The tenant of a licensee has no right as a settler that can be set up to defeat the possession of the licensee.

22-229

359. Persons qualified to purchase from the United States, under section 3, may take a technical half section, when so platted, even though such half section contains more than 320 acres. If the land lies in different sections, or is made up of different quarter sections or lots, the acreage must then approximate, as nearly as may be, the quantity named in the act.

17-450

360. The allowance of a graduation cash entry, and the acceptance and subsequent retention by the Government of the purchase money paid thereon, constitute a sale of the land within the meaning of section 8, the provisions of which not only expressly recognized the validity of such sale, but operated to confirm the title of the claimants thereunder.

30-410

V. Act of March 2, 1896.

361. By the provisions of section 1, the title to lands erroneously patented on account of a railroad grant, and sold by the company, is confirmed in the purchaser, on satisfactory showing as to the *bona fide* character of such sale and purchase.

27-552

362. Where the title of a purchaser of lands excepted from a railroad grant is confirmed by the act demand should be made upon the company for the minimum Government price of the land, with a view to judicial proceedings for the recovery of the value thereof as contemplated by said act.

23-445

363. Where the title to lands is held confirmed under section 1, and a demand is

made upon the company for the value of said lands, the minimum Government price will be treated, for the purposes of such demand, as the value of the lands.

27-552; 29-237

364. If it appears, in answer to a demand for reconveyance of lands excepted from a railroad grant, that the title of a purchaser thereof is confirmed by the act proceedings should then be instituted for the recovery of the value of the land.

23-569

365. Under said act the title to lands erroneously patented on account of a railroad grant, and sold to a *bona fide* purchaser, is confirmed. The Government in such case must proceed against the company for the recovery of the value of the lands as directed by said act.

25-469

366. Under said act it is the duty of the Secretary to investigate the claims of all persons who assert that they are *bona fide* purchasers of lands erroneously patented or certified under a railroad grant, and who present their claims under said statute prior to the institution of suit to cancel the erroneous patent or certification.

29-9

367. The act prohibits the annulment of a patent erroneously issued on account of a railroad grant where the lands covered thereby are held by a *bona fide* purchaser, and confirms the right and title held by such purchaser under the erroneous patent, and thereby avoids the necessity for the issuance of another patent as required by the adjustment act of March 3, 1887.

26-489

368. The word "purchaser" in the act includes one who under a subsisting contract of purchase, made in good faith, holds lands erroneously patented or certified on account of a railroad grant, and title is confirmed in such a purchaser, by said act, even though he may not have made all the payments called for under said contract of purchase.

26-489

369. The distribution, under a plan of reorganization, of lands erroneously patented on account of a railroad among the holders of mortgage bonds, issued by the company receiving the benefit of the grant, brings the parties receiving such title

within the confirmatory provisions of the act. 26-494

370. A demand under the act for payment of the Government price of lands erroneously patented on account of a railroad grant and thereafter disposed of to *bona fide* purchasers, should not be made on a railroad company as the successor in interest to the company receiving the benefit of the grant, if it appear that, as such successor, said company received no benefit from the sale of the lands erroneously patented. 26-494

371. Where title to lands erroneously certified or patented to or for a railroad company is adjudged to have been confirmed in a purchaser by the act, demand for the value of such lands should be made of the company for whose specific benefit they were certified or patented. 30-197

372. If an application for confirmation under the act embraces land within a homestead or preemption entry erroneously canceled on account of the railroad grant, such entryman should be notified and given opportunity to apply for reinstatement under section 3, act of March 3, 1887. 26-489; 27-552

373. If in the adjustment of a railroad grant it appears that homestead or preemption claims have been erroneously canceled for conflict with the grant, the claimant should be notified and given opportunity to make application for reinstatement under section 3, act of March 3, 1887, and submit a showing in support thereof; and the title of any purchaser through the railroad company to any land embraced in such homestead or preemption claim will not be declared confirmed by the act until after due opportunity to the claimant to make such application and showing. 30-197

374. On application for confirmation of the title held by an alleged *bona fide* purchaser, as provided for in said act, the railroad company, or its successor in interest, should be advised of said application, and allowed opportunity to show cause why title should not be confirmed in the applicant. 26-489

375. Under section 1, suit will not lie to vacate patents issued under the act of June 22, 1874, in lieu of lands lost or relinquished in consequence of failure of the

Government to withdraw said lands from sale or entry. 26-705

376. The confirmatory operation of said act, for the benefit of a *bona fide* purchaser of patented railroad lands, is not affected by the fact that said lands are included within a timber land reservation, where, prior to the establishment of said reservation, the lands had been patented to the company. 28-270

RECEIVER.

See LAND DEPARTMENT, IV.

RECLAMATION.

See DESERT LAND, II, f.

I. Generally.

II. Withdrawals.

III. Entry.

IV. Water Rights.

V. Projects.

I. Generally.

1. General regulations of May 31, 1910. 38-620

2. General reclamation circular of April 29, 1912. 40-641

3. Instructions under acts of June 11, 23, and 25, 1910. 39-202

4. Regulations of June 27, 1910, governing appeals from the action of field officers in reclamation matters. 39-51

5. Paragraphs 19 and 20 of circular of May 31, 1910, respecting contests against entries embraced in reclamation withdrawals, amended. 39-296

6. Regulations of November 20, 1911, governing amendment of farm units. 40-312

7. Instructions of June 30, 1909, relative to condemnation proceedings to acquire improvements on lands needed for reclamation purposes. 38-58

8. Instructions of September 17, 1909, with respect to proof and construction charges on homesteads. 38-229

9. Instructions of November 15, 1909, relative to information from fiscal records of field officers of Reclamation Service. 38-311

10. Instructions of August 30, 1904, relative to form of contracts to be entered into between "Water Users' Associations" and the owners of lands within the irrigable area of irrigation projects. 33-202

11. Appeals from the action of a project engineer lie in the first instance to the Director of the Reclamation Service, with right of further appeal to the Secretary of the Interior. 39-2

12. The instructions of June 27, 1910, providing for appeals to the Director of the Reclamation Service and the Secretary of the Interior successively, from adverse action of project engineers, are applicable only in cases involving questions which properly rest for decision within the jurisdiction of the Reclamation Service. 40-116

13. Paragraph 19 of the regulations of May 31, 1910, under the latter act of June 25, 1910 (as amended by the circular of Oct. 15, 1910), holding that "if the approval of the act preceded the termination of the contest, all rights thereunder were *ipso facto* terminated by the act," is modified to hold that upon a finding that the entryman is within the class protected by the act a contest against such entry, yet pending, will be dismissed. 40-307

14. The authority of the Secretary respecting the use of the reclamation fund is to make preliminary investigations to determine the feasibility of any contemplated irrigation project, to construct reservoirs and irrigation works and operate and maintain those thus constructed, and to acquire "for the United States by purchase or condemnation under judicial process" rights or property necessary for these purposes. 33-391

15. The act does not authorize the use of the reclamation fund for the purchase of any land except such as may be necessary in the construction and operation of irrigation works. 33-391

16. There is no authority for the use of the reclamation fund, either directly by the Secretary or indirectly by advancement to others, for the purchase of lands or other property outside of the territorial limits of the United States. 33-391

17. Where an irrigation system already constructed and in operation may be utilized in connection with a greater system

to be constructed under the act, its purchase for such purpose comes within the purview of the act. 33-391

18. The act affords authority for the purchase of an incomplete irrigation system to be used in connection with, and to become a part of, a larger system contemplated by the Government. 34-351

19. The Secretary has no authority to embark upon or commit the Government to any irrigation enterprise that does not contemplate the absolute transfer of the property involved to the United States. 33-391

20. The act contemplates that the United States shall be the full owner of irrigation works constructed thereunder, and clearly inhibits the acquisition of property, for use in connection with an irrigation project, subject to servitudes or perpetual obligation to pay rents to a landlord holding the legal title. 34-186

21. A permanent easement attaching to public lands by construction of a reservoir and canals upon a right of way acquired under the act of March 3, 1891, does not upon acquisition of such irrigation system by the United States for use in connection with a project under the reclamation act, become extinguished by merger in the estate of the Government in such reservoir lands; and entries allowed for lands within and below the flowage contour line of the reservoir as marked upon the township plat, are subject to the right of flowage by storage of waters in the reservoir. 37-6

22. Where the Government acquires an irrigation system held in private ownership, for use in connection with a reclamation project under the act of June 17, 1902, it takes the same free from any obligation or control of State authority theretofore existing. 37-6

23. The Secretary has no authority to permit the owner of lands needed for a reservoir to be constructed under said act, to select other lands of the same area within the district that may be made susceptible of irrigation from the proposed reservoir, in exchange for the lands so needed for reservoir purposes. 32-459

24. The Secretary has full authority to purchase lands necessary for reservoir purposes, to arrange the terms of purchase,

and to allow the vendor to retain possession until the land may be actually needed, where by so doing the purchase may be more advantageously made; but he has no authority under said act to lease such purchased lands after the Government has taken possession thereof. 32-416

25. The Secretary has authority to make temporary leases of lands reserved or acquired by purchase for use in connection with an irrigation project, where use under the proposed lease will not interfere with the use and control of the lands when needed for the purposes contemplated by the reservation or purchase. 34-480

26. Temporary leases for grazing and other agricultural purposes may be made of lands acquired through condemnation proceedings for reservoir or canal purposes in reclamation projects during such periods as may elapse between the acquisition of title and the actual use of the same for reservoirs and canals. 39-525

27. All such leases should state the purpose for which the lands were acquired and that such purpose will not in any manner be interfered with or delayed by the lease; should specifically provide for the immediate, or speedy, termination of the lease in event it is desired to utilize the land or any part thereof for reclamation works, or in event the work of reclamation is found to be hindered or delayed by reason thereof; and should be limited to one year, but may contain provision for renewal for the succeeding year in event the lands should not sooner be needed for reclamation purposes. 39-526

28. The right of the Government to appropriate public land for use in the construction and operation of irrigation works is not affected by the fact that the land is mineral in character. 35-216

29. The Secretary has no authority, under existing legislation, to permit the cutting of timber from the public lands for use in the construction of irrigation works under said act. 32-495

30. The phrase "including artesian wells," in section two, is used to describe one class of irrigation works to be constructed in carrying out the scheme for reclaiming arid lands provided for in said act, and it is not contemplated by said

section that such wells may be sunk as a part of the preliminary examinations authorized therein. 32-278

31. In the prosecution of the work provided for in said act it is not permissible to sink an artesian well where it is believed that if water is found it will not be suitable or needed or used for irrigation purposes. 32-278

32. The drilling of wells for the purpose of determining whether underground water exists that may be made available in connection with a project, comes within the power conferred by the second section of the act, "to make examinations and surveys * * * for the development of waters." 34-533

33. Under the authority conferred upon the Secretary by the act he may, in his discretion, enter into contracts for the construction of irrigation works or construct such works by labor employed and operated under the superintendence and direction of Government officials. 34-567

34. Until so authorized by Congress, neither the department nor the Territorial government of Arizona has power to dedicate for use in connection with an irrigation project lands in said Territory which, by section 2 of the act of February 2, 1863, have been reserved, for school purposes, to the future State to be erected including the same. 32-604

35. Under the provision in the act of August 30, 1890, directing a reservation in all patents for lands west of the one-hundredth meridian for a "right of way thereon for ditches or canals constructed by authority of the United States," the Government has full authority to construct canals or ditches over any such lands in connection with reclamation projects. 36-482

36. For the purpose of carrying out the provisions of the act, the Government may avail itself of the privileges conferred by the act of March 3, 1891, granting the right of way through the public lands and reservations for canals, ditches, and reservoirs for irrigation purposes, to the same extent that individuals, corporations, or associations of individuals, may exercise such privileges, and subject to the same conditions and limitations. 33-563

37. Under the provision of the act of June 21, 1906, authorizing the sale of allotted Indian lands within reclamation projects during the trust period, a contract by an allottee to convey to the United States a strip over his allotted lands, as a right of way for a canal under a reclamation project, executed during such period, may properly be approved.

36-135

38. Under the provisions of the act of March 6, 1906, authorizing the disposition of such surplus and allotted lands on the Yakima Indian Reservation as may be subject to irrigation by means of projects under the reclamation act, 20 acres is fixed as the unit for Indian ownership to be irrigated by the waters of any such project, and if an Indian desires to accept the benefits of the act and place his surplus lands under the control of the Government, to be sold for his benefit, he can do so only upon the condition that he will retain 20 acres thereof, and no more, for which a water right shall be secured to him, appurtenant to the land and subject to the same charge for construction and annual charge for maintenance as other lands under the project.

35-110

39. Under the authority conferred upon the Secretary by the act of June 27, 1906, to "fix a lesser area than forty acres as the minimum entry" and to "establish farm units of not less than ten or more than one hundred and sixty acres," as to all lands withdrawn and entered under the reclamation act, he may make such subdivisions of the public lands entered under the reclamation act as in his judgment may be deemed advisable, in units of 10 acres or multiples thereof up to 160 acres.

35-110

II. Withdrawals.

40. Instructions of June 6, 1905, relative to lands withdrawn.

33-607

41. Amendment of paragraphs 6 and 7 of regulations of June 6, 1905, authorizing contests of entries embracing lands within withdrawals under the reclamation act and defining the rights of successful contestants with respect to such lands.

37-362, 365

42. Paragraphs 6 of regulations of January 19, 1909, to the effect that the prose-

cution of contests affecting lands included within a first-form withdrawal, out of which preferred rights of entry might arise, should not be allowed, has no application to a protest by one claiming under a placer location against a conflicting desert-land entry, no question of preference right of entry being involved in such proceeding.

38-314

43. Where land embraced in a homestead entry was withdrawn for use in connection with a reclamation project pending a contest which resulted in cancellation of the entry, the successful contestant, upon restoration of the land, is entitled to a period of 30 days from the date of such restoration within which to exercise his preference right of entry.

44. Order of July 13, 1908, with respect to withdrawals.

37-27

45. Instructions relative to reservation of lands for irrigation works and withdrawal from disposition of lands susceptible of irrigation.

32-6

Circular of March 31, 1904, relative to withdrawal of lands.

32-537

46. Withdrawals under the "second form," do not affect coal lands.

36-138

47. Circular of September 9, 1902, relative to entries on lands withdrawn for the construction of irrigation works.

31-420

48. Circular of June 15, 1904, relative to entries of lands withdrawn within the irrigable area of irrigation projects.

33-38

49. Withdrawals in connection with irrigation projects will be made as follows:

(1) When a site has been selected with a view to making an examination and survey for the purpose of determining whether the construction of an irrigation project upon such site is practicable and advisable, a withdrawal will immediately be made of all lands believed to be susceptible of irrigation from such contemplated works, in accordance with the second form of withdrawal provided for by the third section of the act, and at the same time a preliminary withdrawal will be made of lands that may be needed for use in the construction and operation of the works, which will reserve such lands from entry of every character but will not affect entries previously made.

(2) As soon as it shall be determined that the project is practicable and advisable and the construction of the same is approved and authorized by the Secretary, a withdrawal will be made of all public lands shown by the examination and survey to be required for use in the construction and operation of the works, and all persons who may have made entry of such lands within such withdrawal prior to the preliminary withdrawal and who have not acquired a vested right thereto, will be notified of the appropriation of their lands for irrigation purposes and that their entries will be canceled and their improvements paid for by the Government as provided for by the eighth and ninth sections of the circular of June 6, 1905, unless sufficient cause be shown within 60 days from the date of such notice. 34-158

50. The practice of designating certain withdrawals as "temporary" discontinued. 35-649

51. Directions given that all uncompleted applications pending at the time of withdrawal of lands for use in the construction and operation of irrigation works, or of lands susceptible of irrigation thereunder be rejected or disregarded, except that homestead entries may be allowed for lands susceptible of irrigation, subject to the conditions and limitations of the act. 35-649

52. Where the application is based upon actual settlement preceding withdrawal, notice thereof should be given the Reclamation Service and favorable consideration made contingent upon the exclusion of the land from the withdrawal. 35-649

53. Uncompleted claims to lands withdrawn and determined to be needed for construction of irrigation works in connection with a project that has been found practicable, should not be allowed to be perfected, but should remain in the same status as existed at the time the determination was made and the rights of the claimants adjusted upon the basis of that status. 34-421

54. An application to make homestead entry for land embraced within a first-form withdrawal should not be allowed, nor received and suspended to await the

possible restoration of the lands to entry, but should be rejected. 38-349

55. The power conferred by the act to make the necessary withdrawals to carry into effect its provisions, and to acquire rights and property for the purpose contemplated, implies the right to appropriate for irrigation purposes public lands to which the United States has the full legal and equitable title, but the inchoate rights acquired by a *bona fide* settlement made in pursuance of and in strict compliance with the public-land laws should not be arbitrarily taken without compensation. In determining the compensation it should be considered with reference to the loss sustained by the settler in depriving him of his inchoate right by the arbitrary taking of lands which he had cultivated, improved and resided upon under authority of law with a view to the acquisition of the title. 34-155

56. The Secretary has no authority under the seventh section of the act to compensate settlers upon lands within the limits of a withdrawal made in connection with an irrigation project unless they have in good faith acquired an inchoate right to the land by complying with the requirements of law up to the date of the withdrawal and have such a claim as ought to be respected by the United States. 34-155

57. By the mere filing of an application to enter under the homestead law, upon which action is suspended, and tender of the necessary fees, the applicant acquires no vested right to or interest in the land applied for, nor does such application have the effect to segregate the land from the public domain, so as to prevent a withdrawal thereof for reclamation purposes. 35-250

58. The rights of an entryman, as to the measure of compensation and the character of the action that may be taken by the Government in acquiring or appropriating the land embraced in his entry for use in the construction and operation of irrigation works under the reclamation act, must be determined by the status of the entry at the time of the withdrawal of the lands for such purposes. 35-459

59. Where the entryman at the time of the withdrawal had earned title to the

land by full compliance with the homestead law, he is entitled to compensation for the land and the improvements thereon as fully as if the legal title had passed to him, but no evidence of title either equitable or legal will be issued. 35-459

60. Lands withdrawn from entry, except under the homestead laws, in accordance with the said act, are not, during the continuance of such withdrawal, subject to entry under the desert-land laws. 32-536

61. Lands withdrawn from "settlement, entry, or other form of disposal under the public-land laws, except the homestead laws," in accordance with the said act, are not, during the continuance of such withdrawal, subject to disposal under the coal-land laws, where no rights thereto were initiated under such laws prior to the order of withdrawal. 32-560

62. Lands withdrawn from entry, except under the homestead laws, in accordance with the provisions of the act, are not subject to selection under the exchange provisions of the act of June 4, 1897. 33-360

63. Public lands lying within the irrigable area of a reclamation project can be disposed of only under the homestead law and in conformity with the legal subdivisions defined by the public-land surveys. 34-65

64. A withdrawal of lands under said act will defeat a prior application to purchase the same under the timber and stone laws, where at the date of withdrawal the applicant had acquired no vested right to the lands embraced in his application. 32-472

65. By a successful contest against a desert-land entry the contestant does not acquire such a preference right of entry as will, prior to its exercise, except the land from the operation of a withdrawal made under said act. 32-396

66. Lands valuable for mineral deposits and embraced within a withdrawal of lands susceptible of irrigation by means of a reclamation project, are not thereby taken out of the operation of the mining laws, but continue open to exploration and purchase under such laws. 35-216

67. A mineral location founded on actual discovery of a valuable deposit of mineral

within the limits of the claim, and maintained in accordance with the mining laws and local regulations, excepts the land from the operation of a withdrawal under said act. 32-387

68. Withdrawals made by the Secretary of the Interior under said act, of lands which are required for irrigation works, are effective to withdraw from other disposition all lands within the designated limits to which a right has not vested. 32-387

69. No such rights are acquired by settlement upon lands embraced in the entry of another as will attach upon cancellation of such entry, where at that time the lands are withdrawn for use in connection with an irrigation project; nor is there any authority for purchase by the Government of the settler's claim or of the improvements placed upon the land by him. 34-478

70. All entries of lands withdrawn under the act are subject to the conditions imposed by section 3 thereof, and a revocation of the withdrawal operates to remove those conditions and leaves the entries in the same situation as entries made prior to the withdrawal, and such conditions can not, by force of a second withdrawal, be reimposed upon such of the entries made during the period of the first withdrawal as had not been perfected at the date of the second withdrawal. 34-445

71. Upon the cancellation of a homestead entry covering lands embraced within a subsequent withdrawal made under the act, the withdrawal becomes effective as to such lands without further order. 33-520

72. Under the act of February 15, 1901, lands in forest reserves created under authority of the act of March 3, 1891, may be appropriated and used for irrigation works constructed under authority of the act of June 17, 1902, as well as for works constructed by individuals. 33-389

73. The Secretary of the Interior has the same right to withdraw lands within the Yosemite National Park, created by the act of October 1, 1890, for the uses and purposes contemplated by the act of June 17, 1902, that he has to withdraw lands for such purposes within forest reserva-

tions created under authority of the act of March 3, 1891. 33-389

74. The use of rights of way over public lands within reservations for the purposes contemplated by either the act of February 15, 1901, or the act of June 17, 1902, will not be permitted if such use is incompatible with the public interest; and if at any time the public interest is jeopardized by the use of such rights of way after they have been granted, they may be revoked. 33-389

75. No such right is acquired by virtue of an application for right of way for a railroad under the act of March 3, 1875, before the approval thereof, and prior to the construction of the road, as will prevent the Secretary of the Interior withdrawing the lands covered thereby for use as a reservoir site under the act of June 17, 1902. 33-597

76. Where the affidavit as to the character and condition of the land, accompanying an application to make selection under the act of June 4, 1897, is executed before the selector acting as notary public, such affidavit is void, and the application can therefore have no effect to except the lands covered thereby from a subsequent withdrawal embracing the same made in accordance with the provisions of section 3 of the act of June 17, 1902. 33-350

77. Congress having by the act of July 5, 1884, provided for the disposal of lands in abandoned military reservations, the Secretary of the Interior is without authority to dispose of such lands in any other manner or to segregate them for use as a reservoir site in connection with an irrigation project. 33-130

78. The fact that the act of April 18, 1896, provides that the lands in the abandoned portion of the Fort Assiniboine Military Reservation, thereby opened to entry, shall be disposed of only under the laws therein specifically named does not prevent a withdrawal, under the act of June 17, 1902, of any of said lands as to which no vested right has attached. 34-653

79. Lands formerly within the Fort Buford Military Reservation were by the act of May 19, 1900, restored to the public domain and made subject to existing laws relating to disposal of the public lands, ex-

cept such laws as are not specifically named therein, and are subject to withdrawal under the reclamation act as other portions of the public domain subject to entry under the general land laws; and a withdrawal of such lands for reclamation purposes is effective as to all of the lands for which entry was not made within three months from the filing of the township plat, and prior to the withdrawal. 34-347

80. By the provision that lands susceptible of irrigation under a project contemplated under said act shall be withdrawn "from entry, except under the homestead laws," Congress intended to inhibit any mode of private appropriation of such lands except by such entry under the homestead laws as requires settlement, actual residence, improvement, and cultivation; hence such lands are not subject to soldiers' additional entry under section 2306, R. S. 33-520

81. Lands withdrawn from entry, except under the homestead laws, as susceptible of irrigation under a contemplated project are not subject to soldiers' additional entry under section 2306, R. S. 33-525; 34-653

82. An application to make soldiers' additional entry, although filed prior to the passage of the act and pending at the date of an order withdrawing the lands covered thereby under the provisions of said act, is not effective to except the lands from such withdrawal. 34-311

83. An application to enter under section 2306, R. S., even though approved by the Commissioner of the General Land Office, will not, prior to the allowance of entry thereon, prevent a withdrawal of the land covered thereby. 34-560

84. Congress having expressly provided that lands susceptible of irrigation under projects contemplated under said act shall be withdrawn from entry "except under the homestead laws," the Secretary of the Interior has no power to withhold such lands from disposition under the homestead laws pending sufficient progress in the construction of the works to assure a sufficiency of water for the irrigation of the land. 33-104

85. The authority to withdraw lands for irrigation purposes conferred upon the Sec-

retary of the Interior is a special authority to make withdrawals for a particular purpose and is limited to the specific uses provided for in the act or to uses incident to and in furtherance thereof; and he has no authority under said act to withdraw lands for reservoir sites with a view to the use of the waters impounded therein for domestic purposes. 33-415

86. There is no authority to make such executive withdrawal of public lands in a State as will reserve the waters of a stream flowing over the same from appropriation under the laws of the State, or will in any manner interfere with its laws relating to the control, appropriation, use, or distribution of water. 32-254

87. The act of February 18, 1911, contemplates only entries legally made prior to the act of June 25, 1910, and afterwards relinquished, and has no application where the former entry was one in form only and in legal contemplation a mere nullity, having been erroneously allowed while the lands were embraced in a first form withdrawal under the reclamation act. 40-406

88. The provision in section 5 of the act of June 25, 1910, as amended by the act of February 18, 1911, that upon relinquishment of an entry within a reclamation withdrawal the lands so relinquished shall be subject to homestead settlement and entry under the reclamation act, has reference only to lands covered by second form withdrawals, and has no application to lands withdrawn under the first form. 40-406

89. The proviso to the act of February 18, 1911, that "where entries made prior to June 25, 1910, have been or may be relinquished in whole or in part, the land so relinquished shall be subject to settlement and entry under the homestead law as amended by the act of June 17, 1902," has reference solely to lands withdrawn as susceptible of irrigation and subject to homestead entry at the time of application therefor, and has no application to lands withdrawn by the Government for use in the construction and operation of the project. 40-627

90. A withdrawal of lands susceptible of irrigation from an irrigation project is effective as to lands in a school section upon which a settlement was existing at

the date of the township survey and at the date of such withdrawal, where the settler failed to make entry within the period allowed by law to settlers to place their claims of record; and thereafter the settler in making entry is restricted to any one of the farm units covered by his settlement. 40-586

91. A settlement upon part of a school section existing at the date of the township survey subjects the land to homestead entry by that settler as public land of the United States, but does not except the land absolutely from the grant to the State, the State's right being held in abeyance while the right of the settler is *in fieri*, unless in the meantime it elects to avail itself of the privilege of selecting lands in lieu thereof; and while so held in abeyance the fee remains in the United States and the land retains its character as public land and comes under the operation of a withdrawal for its reclamation as any other tract of public land. 40-586

III. Entry.

92. Instructions of January 18, 1908, with respect to sections 4 and 5. 36-256

93. Instructions of February 10, 1909, with respect to reclamation of one-half of irrigable area of homestead entries within projects. 37-448

94. Regulations of February 27, 1909, concerning reclamation of lands entered. 37-468

95. Instructions of June 16, 1909, relating to additional homestead entries within projects. 38-58

96. Instructions of March 30, 1910, holding the rule of approximation applicable to homestead and desert-land entries within projects. 38-513

97. Circular of October 3, 1910, under act of June 25, 1910, governing applications for leave of absence from reclamation homesteads. 39-278

98. The right of additional homestead entry granted by section 6 of the act of March 2, 1889, can not be exercised upon lands within a reclamation project. 40-234

99. An entry of lands subject to the provisions of the reclamation act will not be allowed as additional to a prior entry

subject only to the provisions of the general homestead law. 36-449

100. Upon the death of a homesteader having an entry within an irrigation project, leaving no widow, and only minor heirs, his right may, under section 2292, R. S., be sold for the benefit of such heirs. 36-332

101. If in such case the land has been subdivided into farm units, the purchaser takes title to the particular unit to which the entry has been limited; but if subdivision has not been made he will acquire an interest in only the land which would have been allotted to the entryman as his farm unit; in either case taking subject to the payment of the charges authorized by the reclamation act and regulations thereunder and free from all requirements as to residence and cultivation. 36-332

102. The Secretary is empowered to fix the limit of area for each homestead entry under the same project according to the quality and character of the land with reference to its productive value; but all entries must be of contiguous tracts and of not less than 40 nor more than 160 acres. 32-237

103. All entries must be made according to the ordinary legal subdivisions, and the Secretary has no authority to allow an entry for less than 40 acres, nor to subdivide a 40-acre tract for combination with other subdivisions. 32-237

104. The Secretary may require that homestead entries shall comprise certain specified tracts, selected with reference to soil and water supply, whether the areas of the entries are uniform or not. 32-237

105. Every entry of lands within the limits of a withdrawal under the act is subject to reduction to a farm unit as thereafter established by the Secretary, and improvements placed upon the different subdivisions by the entryman prior to such reduction are at his risk. 37-718

106. In subdividing such an entry the Secretary is not required to confine the farm units to the limits of the entry, but may combine any legal subdivision thereof with a contiguous tract or tracts lying outside of the entry so as to equalize in value the several farm units. 37-718

107. The act of June 27, 1906, authorizes the Secretary to fix a lesser area than 40 acres as a farm unit when "by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than 40 acres may be sufficient for the support of a family," or when necessary "in order to provide for practical and economical irrigation," and there is no authority for subdividing a smallest legal subdivision under any other circumstances. 37-718

108. After public notice has been given of the lands irrigable under an irrigation project, and the limit of area per entry has been fixed and farm units designated upon a plat as required by said act, all persons having entries made after the withdrawal of such lands will be required to conform their entries to the farm units so designated, both as to limit of area and the combination of subdivisions prescribed. 33-268

109. Persons making homestead entry of lands within the irrigable area of any project commenced or contemplated under said act, will be required to comply fully with the requirements of the homestead law as to residence, cultivation, and improvement; and failure to supply water from such works in time for use upon the land entered will not justify a failure to comply with the law and to make proof thereof within the time required by the statute. 32-633

110. There is no authority for granting a leave of absence to a homesteader who made entry of lands believed to be susceptible of irrigation under a contemplated project, on the ground that he can raise no crops on the land in its present arid state and that it is impossible to procure water for the irrigation thereof prior to completion of the project. 33-257

111. A homesteader whose entry is within the irrigable area of an irrigation project, but not subject to the restrictions, limitations, and conditions of the act, can not, under the law, prior to the acquisition of title to the land, enter into an agreement to convey to a water-users' association any portion of the land embraced in his entry, to be held in trust and sold for

the benefit of the homesteader to persons competent to make entry of such lands.

34-532

112. The fact that lands are within a reclamation withdrawal does not prevent additional entry thereof under section 2, act of April 28, 1904, where farm units have not been established and where the original entry, to which the additional must be contiguous, was made subject to the restrictions and conditions of the reclamation act, the combined original and additional entry, however, being subject to adjustment to a farm unit when established.

38-233

113. A settler on unsurveyed land subsequently embraced in a withdrawal as subject to reclamation under an irrigation project, may, upon survey of the land, make and complete entry for the full area allowed by law and appropriated by his settlement, notwithstanding such withdrawal previous to entry, free of the added conditions and limitations imposed by the reclamation act upon settlers subsequent to withdrawal.

38-603

114. An unperfected desert-land entry in a reclamation project which has been reduced to 160 acres by relinquishment of the excess area under the act of June 27, 1906, and has thereby become subject to the reclamation act and qualified to take water from the project, may be assigned in part under the act of March 28, 1908.

40-622

115. Under the desert-land act as modified by the act of June 27, 1906, final proof upon a desert entry within a reclamation project can not be held to have been made and completed until the payments required by said acts and the act of June 17, 1902, have been made; and the department is without authority to accept or regard final proof in such cases as complete, or to issue patent thereon, until after full compliance with the terms of payment imposed by the reclamation act.

39-519

116. Where, however, the parties in interest are able to negotiate loans for amounts sufficient to pay the entire reclamation charges upon any entry, contingent upon the prompt issuance of final certificate and patent, consideration of the final proof and issuance of final certificate and

patent, in cases otherwise regular, may be expedited.

39-519

117. A desert entryman whose land is included within a reclamation project may elect to proceed with the reclamation thereof on his own account, and thus acquire title to all, or so much of, the land included within his entry as he can secure water to irrigate, or accept the conditions of the reclamation act and acquire title thereunder to 160 acres; but he can not avail himself of both the reclamation project and other means of reclamation and thus acquire title to more than 160 acres of land.

39-380

118. A homestead entry of land within a reclamation project, allowed subsequently to the act of June 25, 1910, upon an application in all respects regular filed prior to that act, and upon which action was delayed only because of pressure of business in the local office, is not in violation of the provisions of section 5 of said act.

39-432

119. Where a portion of a homestead entry made subject to the provisions of the reclamation act is subsequently eliminated from the project, and the portion remaining within the project is designated as a farm unit, the entryman may retain either the farm unit or the portion lying without the limits of the project, at his election, and the entry will be canceled as to the remainder.

39-502

120. In view of the equities in this particular case, direction is given that if the entryman so desires the portion of the entry eliminated from the project may be again brought thereunder and added to the farm unit with a view to permitting him to complete entry for the entire tract.

39-502

121. The act of June 25, 1910 (36 Stat., 835), was designed to withhold lands within a reclamation project from entry of every character until public announcement of the date when the water could be applied; while the act of that date (36 Stat., 864) was intended to relieve entrymen who had made entry for lands within a reclamation project prior to the passage of said act, and prior to the applying of water by the project, from the necessity of maintaining residence upon the land

"until water for irrigation is turned into the main irrigation canal from which the land is to be irrigated," it condones the prior failure of the entryman to maintain residence where water has not been available for irrigation of the land, and suspends the running of the seven-year limitation of the life of the entry by allowing the period of residence to commence from the time when the water is made available. 40-306

122. By virtue of the provisions of the act of June 25, 1910, a homestead entry within a reclamation project is not limited to the seven-year period fixed for consummation of ordinary homestead entries elsewhere on the public domain, but may be completed within the time fixed in the public notice for compliance with the requirements of the reclamation act, unless the project be abandoned, notice of which abandonment will terminate the suspension of the seven-year period, and thereafter the entry will fall within the general class of homestead entries and be governed by the general homestead laws. 40-291

123. Circular of December 17, 1910, governing assignment of reclamation entries under act of June 23, 1910. 39-421

124. Where a homestead entry within a reclamation project is divided into farm units, the entryman is entitled to retain only one of such units, to be designated by him; and as to the remaining units the entry must be canceled, or where satisfactory final proof has been submitted, assignment thereof may be made under the provisions of the act of June 23, 1910. 39-297

125. Where farm units have been established within a reclamation project, they become the smallest legal subdivisions subject to disposition, and assignments of lands within the project under the act of June 23, 1910, can thereafter be made only in accordance with such subdivisions 39-297

126. To entitle one to take by assignment under the act of June 23, 1910, he must show that he has not acquired title to and is not claiming any other farm unit or entry under the reclamation act. 39-297

127. A married woman may, under the act of June 23, 1910, take an assignment of a homestead entry made under the reclamation act, upon which satisfactory final proof has been made, showing residence and cultivation for the required time, but upon which not all of the water-right charges have been paid, provided the laws of the State or Territory in which the entry is located permit a married woman to purchase and hold real estate as a *femme sole*; but she will be required to show, in addition to the usual requirements in such cases, that the purchase is made with her own separate money, in which her husband has no interest or claim; that the assignment is not taken for the use or benefit of her husband, and that she has no agreement or understanding by which any interest therein will inure to his benefit; and that the water right thus sought by assignment, together with such other water rights as may be already held in possession by such assignee, will not aggregate water rights for more than 160 acres of land, furnished under the reclamation act. 39-504

128. Where a homestead entry within a reclamation project was conformed to a farm unit and canceled as to the remainder, at a time when the entryman could not have made five-year proof, the entry will not thereafter be reinstated as to the canceled portion for the purpose of permitting the entryman to submit final five-year proof thereon with a view to assigning such portion under the provisions of the act of June 23, 1910. 40-322

IV. Water Rights.

129. Circular of April 4, 1906, relative to applications for water rights. 34-544

130. Regulations of June 16, 1911, respecting water-right applications. 40-139

131. Forms for water-right applications. 39-532

132. Forms for water-right certificates and final affidavits. 39-197

133. Regulations of May 27 and July 8, 1908, governing collection of water-right charges. 37-11, 12, 13, 16

134. Instructions of March 5, 1910, relative to water-right charges upon lands

within reclamation projects sold under foreclosure proceedings. 38-480

135. Regulations of December 19, 1911, concerning collection of water-right charges. 40-317

136. Regulations of April 8, 1911, concerning collection of water-right charges by special fiscal agents. 40-15

137. Circular of February 2, 1912, respecting water-right payments in event of cancellation or relinquishment of entries. 40-398

138. Circulars of March 22 and April 20, 1909, relating to applications for water rights. 37-521, 581

139. A corporation, otherwise competent, is entitled to acquire a water right. 37-428

140. To entitle an applicant for the use of water for lands held in private ownership within the irrigable area of an irrigation project under said act, to the benefits of the act, he must hold the title in good faith, and his occupancy must be *bona fide* and in his own individual right. 34-647

141. Lands held by virtue of a desert-land entry are held in private ownership within the meaning of the act, and the entryman or his assignee is entitled to the same rights and privileges and is subject to the same conditions and limitations, so far as the right to the use of water is concerned, as any other owner of lands within the irrigable area of an irrigation project. 34-29

142. Persons holding contracts to purchase lands from a State, on deferred payments, no conveyance of title to be made to the purchasers until full payment, are entitled, if not in default and their contracts are in good standing, to subscribe for and purchase water rights under the reclamation act for irrigation of such lands, subject to the provisions and limitations of that act. 40-270

143. Individual owners of lands acquired under the provisions of the Carey Act may be supplied with such additional water from reservoirs constructed under the reclamation act as may be necessary to fully develop and reclaim the irrigable portions of such lands, subject to all the

conditions governing the right to the use of water under any particular project. 35-222

144. The relinquishment of a homestead entry within the irrigable area of an irrigation project, where the entryman is in default in the payment of any annual installment, does not relieve the land of such charge, and a succeeding entryman takes it subject thereto. 35-29

145. There is nothing in the act to prohibit a graduated scale of the annual payments required of users of water from projects constructed thereunder, and in all cases where it is deemed advisable this plan of payment may be adopted. 34-78

146. The provision of section 5 of the act, restricting the sale of a right to use water for land in private ownership to not more than 160 acres, will not prevent the recognition of a vested water right for a larger area and protection of the same by allowing the continued flowage of the water covered by the right through the works constructed by the Government. 34-351

147. A desert entryman of lands falling within a Government reclamation project who seeks to secure water for the reclamation thereof from the project is required by section 5 of the act of June 27, 1906, as a condition precedent to his right to water, to relinquish to the Government all of the land embraced within his entry in excess of 160 acres. 40-336

148. Final certificate and patent will not issue upon a desert-land entry within a reclamation project until all payments for a water right under such project have been made and the water right permanently attaches to the land. 38-194

149. No deduction from the irrigable area subject to water charges will be made on account of easements for highways or irrigating ditches. 39-2

150. An applicant for water rights under a reclamation project is required to pay for water for the entire irrigable area of his entry as shown on the plat upon which the construction charges were apportioned; and where mistake in the plat is alleged as to the irrigable area of the entry, application for correction thereof

should be made to the local officer of the Reclamation Service. 39-2

151. Upon the issuance of a water-right certificate the right evidenced thereby becomes appurtenant to the land, subject to forfeiture for failure to pay the annual installments at the time and in the manner prescribed by law and the regulations, and a subsequent purchaser of the land succeeds to the rights and status of the original owner, subject to the same charges and conditions. 39-580

152. Applications for water rights under the reclamation act by individual lot owners for lands which have been subdivided into town lots will not be allowed; but water may be supplied to towns from reclamation projects by delivery to some convenient point, to be handled and distributed to the inhabitants of the town by the municipal authorities in accordance with the provisions of the act of April 16, 1906. 39-591

153. Where after application for water right for the irrigable area of a farm unit, under the terms and for the acreage fixed in the published notice, a second notice is given showing an increased irrigable area in the farm unit and fixing a different rate per acre, the applicant is entitled to complete payment for the area originally fixed at the rate specified in the first notice, but as to water right for the additional irrigable acreage shown by the second notice, he will be required to pay at the rate fixed in the latter notice. 39-591

154. Water in irrigation canals constructed and operated under the reclamation act, which has not become appurtenant to any land and is not needed for irrigation, may be temporarily disposed of by lease, in the discretion of the Secretary of the Interior, the proceeds to become a part of the reclamation fund. 40-573

155. A successful contestant of an entry within a reclamation project will be required, in making entry in exercise of his preference right, to pay the building charge obtaining at the time his application is filed, and is not entitled to the rate in effect when the former entry was made nor to credit for the payments made by the former entryman. 40-458

156. The fact that a widow who under section 2291, Revised Statutes, succeeds to the right of her husband in an unperfected homestead entry within a reclamation project has previously secured water from the project for reclamation of land held by her in private ownership in no wise affects her right to acquire water under the project for completion of such entry under the reclamation act. 40-116

157. Where the irrigable area of a legal subdivision embraced in an entry within a reclamation project is shown on the duly approved farm-unit plat to be greater than the entire area of such legal subdivision shown on the prior township plat, applications for water rights and payments therefor should be made on the basis of the actual irrigable area, and not on the basis of the acreage shown on the township plat. 40-600

V. Projects.

Belle Fourche.

158. Order of January 24, 1911, relating to payments of charges in Belle Fourche project. 39-531

159. Order of May 4, 1911, relating to payment. 40-67

160. Public notice of December 30, 1911, concerning charges. 40-327

161. Order of February 3, 1912, respecting water service and payment. 40-417, 418

Buford-Trenton.

162. Order of May 13, 1911, relating to payment. 40-82

Carlsbad.

163. Public notice of February 17, 1912, concerning charges. 40-474

Huntley.

164. Proclamation and regulations of May 21, 1907, relative to opening of lands in the Huntley project. 35-684, 686

165. Instructions of August 8, 1907, relative to sale of lots in townsites within the Huntley project. 36-49

166. Public notice of March 13, 1912, relating to operation and maintenance charges. 40-497

Lower Yellowstone.

167. Order of March 27, 1911, concerning payments under Lower Yellowstone project. 39-612

168. Order of May 1, 1911, relating to payments. 40-60

169. Order of April 30, 1912, concerning extension of time for payment. 40-619

Minidoka.

170. Directions given relative to the survey, subdivision, appraisal, and sale of certain lands in Idaho within the irrigable area of the Minidoka project, withdrawn from entry, except under the homestead law, for disposal in accordance with the act of June 17, 1902, and subsequently reserved by the President, under section 2380, R. S., as a townsite. 34-16

171. Order of December 27, 1910, relating to high-land areas in Minidoka project. 39-528

172. Public notice of January 23, 1911, as to operation and maintenance charges in Minidoka project. 39-528

173. Orders of March 18, 24, and 31, 1911, relating to charges, water supply, etc., in Minidoka project. 39-529, 530, 531

174. Order of June 8, 1911, respecting payment. 40-138

175. Public notices of December 30, 1911, and March 21, 1912, concerning charges. 40-330, 511

North Platte.

176. Order of March 24, 1911, concerning payments under North Platte project. 39-606

177. Order of April 21, 1911, relating to water supply. 40-50

178. Public notice of December 30, 1911, concerning payments. 40-336

179. Order of March 13, 1912, concerning payment. 40-507

180. Public notice of March 14, 1912, concerning water service. 40-504

181. Public notice of March 19, 1912, concerning payment. 40-508

Okanogan.

182. Order of March 28, 1911, concerning payments under Okanogan project. 39-613

183. Order of April 29, 1912, granting stay of proceedings. 40-616

Shoshone.

184. Orders of February 6 and March 25, 1911, relating to water supply, payment, etc., in Shoshone project. 39-537, 538

185. Public notice of May 20, 1911, relating to water, payments, entries, etc. 40-122

186. Public notice of February 9, 1912, concerning charges. 40-422

187. Public notice of March 23, 1912, concerning water service. 40-515

Sun River.

188. Instructions of October 1, 1908, governing sale of lots in Fort Shaw and Simms townsites in Sun River project. 37-179

189. Order of March 28, 1911, concerning payments under Sun River project. 39-614

Sunnyside.

190. Public notice of February 29, 1912, concerning water service. 40-437

Tieton Unit.

191. Order of April 14, 1911, relating to water rights. 40-33

192. Public notice of April 18, 1912, concerning water service, charges, entries, etc. 40-579

Truckee-Carson.

193. Instructions of August 18, 1904. 33-190

194. Directions given relative to the publication and posting of notice, under section 4 of the act, regarding the lands irrigable under the Truckee-Carson irrigation project in Nevada. 33-158

195. Regulations of June 25, 1908, concerning applications and charges for water rights. 36-546

196. Order of April 22, 1911, relating to payments. 40-51

197. Public notice of February 8, 1912, concerning payments. 40-422

198. Where an entry within the Truckee-Carson project was made too late in the year 1907 to obtain any benefit by the use of water for the crop season of that year, the first installment for water-right charges did not, under the instructions of May 6,

1907, considered in connection with the instructions of August 5, 1904, become due until December 1, 1908. 38-374

199. The first installment of building charges against lands held in private ownership within the Truckee-Carson project was due and payable December 1, 1907, notwithstanding application for water right was not filed until after the close of the irrigation season of that year. 39-571

200. The regulations of November 1, 1907, with respect to water rights in the Truckee-Carson project did not take effect until January 1, 1908, and a water-right application filed in the meantime is subject to the regulations of May 6, 1907. 39-580

Umatilla.

201. Order of May 16, 1911, respecting payment. 40-97

202. Public notice of March 2, 1912, concerning payment. 40-482

Williston.

203. Order of April 14, 1911, relating to water supply, payments, etc. 40-31

Yuma.

204. Instructions of May 9, 1910, governing entry of lands in Yuma and Colorado River projects restored to entry. 38-589

205. Public notice of March 8, 1912, concerning payment. 40-492

RECORDS.

See EVIDENCE, III.

1. Circular of October 6, 1904, relative to examination of records by public. 33-267

2. Instructions of April 16, 1910, respecting inspection of serial-number registers in local offices. 38-575

3. The control of the records, books, and papers of the General Land Office is intrusted to the discretion of the commissioner, and the department will not interfere in such matter where no abuse of discretion is shown. 30-415

4. Papers belonging to the permanent files of the General Land Office may not be returned to the parties filing the same. 45-258

5. An attorney in good standing before the Land Department, prior to filing his appearance in a case, but preliminary thereto, is entitled to inspect the record and all papers on which action has been taken affecting the right of the parties. 5-400

6. An attorney in good standing before the Land Department is entitled to inspect reports of a special agent on which final action has been taken by the General Land Office adverse to the interests of his client. 24-379

7. A stranger may not inspect the papers in a case in the General Land Office except as the attorney of record. 2-222

8. Where the documents in evidence in the General Land Office are original and properly belong elsewhere, especially when they are not yet properly before the commissioner, they may be withdrawn after copies are made. 2-651

9. The proper examination or use of the plats and other public records in the local offices is not prohibited by law and should not be denied except where it will interfere unnecessarily with the public business. 2-197, 656; 3-174

10. In the local land offices, should be treated as open to inspection by the public, subject only to the restriction that such examination shall not interfere with the orderly dispatch of public business. 27-625

11. While the public records of local land offices and surveyor generals' offices are open to inspection by the general public for information as to all matters in which an individual may have an interest, it is the duty of the officers having such records in charge, in the exercise of a sound discretion, to see that the privilege of examining and taking copies of the same is not abused by using the same merely for the purpose of obtaining information having no reference to any particular interest, with a view to selling the information thus obtained as opportunity may offer. 37-599

12. Registers and receivers of other than consolidated offices may not furnish abstracts from the records for private use and charge therefor except in the case of plats and diagrams. 2-655

13. Circular with respect to exemplification of. 11-386

14. A request for information as to the cost of certified copies of specified papers in the General Land Office is entitled to a response, with such information as may be required to form the basis for a request for such copies. 24-415

15. May be corrected where, through negligence of the local office, it does not show the facts. 15-31

16. An omission of the records in the local office to show the filing of an application to enter may be supplied by affidavits. 17-53, 279

17. Parol evidence may be accepted to show facts that should have appeared of record, but were omitted therefrom by the local office. 22-630

18. An affidavit made to supply certain alleged omissions of matter from the record, which should appear therein, if it exists in fact, will not be stricken from the files, on motion therefor, if the facts, as alleged in said affidavit, are not denied. 25-420

19. Report of local officers as to official acts should be received as correct in the absence of any charge or evidence to the contrary. 15-184

20. Question as to correctness of, is too late when raised for the first time on review. 19-473

21. In no case should notations on the official tract books be expunged or erased. If a notation is made that is afterwards found to be erroneous, the record should be corrected by another entry thereon showing the error. 16-409

22. To cure a defect in official proceedings a former local officer, whose term of office has expired, may append his signature to a jurat accompanying evidence that was submitted before him while holding said office. 17-96

23. In the absence of an official record, showing the purchase of a tract, there is no basis for a patent. 20-330

24. Circular of May 18, 1904, under act of April 19, 1904, relative to production in court, for use as evidence, of original papers on file in General Land Office. 32-635

25. The record of the United States relating to enrollment, muster, and dis-

charge of members of its armies must control in all actions of the departments of the Government; and the fact that a State record with respect to the service of a soldier does not agree with the United States record can not be considered as in any wise impeaching the record of the Government. 37-588

REGISTER.

See LAND DEPARTMENT, IV.

REHEARING.

See PRACTICE, XII.

REINSTATEMENT.

See APPLICATION, 75-76; ENTRY, VII; RAILROAD LAND, 140-153.

RELATION.

1. The doctrine of, can only be invoked to preserve a right, not to create one. 4-117; 6-100; 10-464; 32-377

2. The doctrine of relation can not be invoked to the disadvantage of intervening adverse claims, nor to permit anyone to secure more land by indirect means than may be done directly. 39-460

RELICION.

See PUBLIC LAND, 8.

RELINQUISHMENT.

See APPLICATION, X; CONTEST, 420, 487-489, 638-639; CONTESTANT, 42-65, 101-104; INDIAN LANDS, 71-72, 87-91; RAILROAD GRANT, XII, XIII.

1. When filed, is equivalent to cancellation under the act of May 14, 1880. 1-122

2. When filed, operates *eo instanti* to release the land from the entry, 3-343; 4-123, 188, 196, 506; 7-561; 10-139; 18-589

3. Takes effect when it is filed in the local office and operates *eo instanti* to release the land from the effect of the filing or entry. The subsequent notation of the relinquishment on the records of

the General Land Office is merely a clerical act. 23-492

4. The filing of an unconditional relinquishment operates *eo instanti* to terminate the entry, which is thereafter no obstacle to the making of a second entry by the entryman, notwithstanding it may remain uncanceled of record. 37-383

5. Takes effect immediately on filing notwithstanding a pending contest and opens the land to entry of the first legal applicant, subject to the preferred right of the successful contestant. 2-266, 283, 313, 619

6. Of part of an entry relieves the land covered thereby from reservation, but does not affect the remainder. 22-128

7. The relinquishment of part of a homestead entry, which would render the remaining tracts noncontiguous, should not be accepted. 38-412

8. Where, however, such a relinquishment was accepted, and the entryman upon faith of such action complies with the law and submits proof with respect to the remaining noncontiguous tracts, the entry may be submitted to the board of equitable adjudication with a view to confirmation. 38-412

9. The practice adopted in some local offices of allowing the filing of relinquishments conditionally will no longer be permitted. Hereafter the filing of a relinquishment of an entry or claim under the public-land laws will work a cancellation of the entry or claim and will be at once noted of record, the land being thereby cleared. 40-397

10. Should be received when presented and entry canceled. 5-451

11. Should not be accepted and acted upon during the pendency of a departmental order suspending the entry involved. 18-226

12. After relinquishment the land is subject to the first legal application. 3-320

13. On cancellation after, the land is open to entry by the original entryman, if qualified, the same as by any other applicant. 13-638

14. Filed during the appeal of an adverse applicant leaves the land open to the first legal applicant, subject to final disposition of the pending appeal. 13-590

15. Takes effect of the date filed, though action thereon may be delayed pending proof required as to identity of the party executing the same. 6-579

16. An entryman may relinquish at pleasure any legal subdivision of his entry, if no transfer thereof has been made, and such relinquishment will take effect immediately upon its filing. 31-137

17. Relinquishments of entries run only to the United States, and when filed for any purpose operate to clear the record of the entries to which they relate and should generally be retained as part of the records of the Land Department. 35-254

18. Sent to the local office during a vacancy in the office of the register is not filed in contemplation of law, and if returned to the entryman before the vacancy is filled no action can be taken thereon. 14-133

19. Held for examination and found valid relates back to date of filing, and the application with it is the first legal application. 2-324

20. Can not be made of a fraudulent entry. (See 2-316.) 2-92

21. Is effective whether the entry is valid or invalid and operates at once to open the land. 2-316; 4-449

22. The summary action authorized by section 1, act of May 14, 1880, not to be taken where there is a pending adverse right. 1-156

23. While section 1, act of May 14, 1880, providing that upon relinquishment of a "preemption, homestead, or timber culture" claim the land shall be at once open to settlement and entry, does not specifically embrace timber and stone entries, the Land Department has adopted a rule of procedure with respect to relinquishments thereof similar to that outlined therein. 36-440

24. No such rights are acquired by an application to intervene in proceedings instituted by the Government against a final entry as will prevent acceptance of a relinquishment of the entry and the allowance of another application for the same land. 36-440

25. Effectually divests the entryman of all claims under the entry. 3-468;

4-29, 587; 8-606

26. Filed by the entryman terminates his rights in a pending contest with an adverse claimant. 11-251; 21-95

27. One who applies to relinquish and take another tract on the ground of mistake in the first entry is estopped from claiming any right thereunder as against another who, with knowledge of such facts, settles on said land and files therefor. 10-279

28. Executed during the sickness of the entryman, when he could not go upon the land, subsequently returned and retained by him, does not call for cancellation. 13-63

29. The husband is not required to join where the wife relinquishes an entry made by her previous to marriage. 13-548

30. Of homestead entry not defeated by the protest of the entryman's wife. 11-352

31. No objection to action upon, that it was filed without the knowledge or consent of the entryman's attorney. 15-307

32. Ineffectual to release the land until filed. 3-224;

6-246; 9-445; 15-182; 18-589

33. Made by the entryman after he has parted with his interest in the land is null and void. 6-512; 8-641; 13-37

34. Will not defeat the right of a prior purchaser holding under sale of the final certificate. 9-97

35. By an entryman who has transferred all his interest in the land can not defeat the rights of his transferees. 21-12

36. Made by the entryman after mortgaging the land will not defeat the right of the mortgagee to show that the entryman was entitled to patent. 8-618

37. Where proceedings are instituted by the Government against a final entry which has been mortgaged or transferred, and during the pendency of such proceedings the entryman files a relinquishment, the entry should not be canceled until final decision upon the rights of the mortgagee or transferee, and no application to enter the land should be received until the pending proceedings have been disposed of and the entry formally canceled upon the records of the local office. 38-198

38. Of a desert entry, theretofore assigned under departmental regulations,

will not defeat the right of the assignee; nor can the holder thereof plead want of notice of the assignment. 18-226

39. Will not be accepted where the right of a transferee would be defeated thereby. 14-224, 644

40. Of a final entry may be accepted without requiring the entryman to show that he has not transferred the land where no interest of a transferee is asserted and the record discloses no fraudulent intent. 14-82

41. The rule that one who has parted with his interest in land will not be permitted to relinquish is for protection of the transferee and should not prevent action on a relinquishment where it is asked by the transferee, who also urges noncompliance with law as against the existing entry. 12-100

42. The rule that a, executed after final proof and after sale of the land, is invalid, can not be invoked on behalf of one who fails to show, under oath, any interest in the land, or that the entryman in fact complied with the law. 23-28

43. Transmitted by mail is regarded as filed at the moment received at the local office (9 a. m.), though the letter transmitting it was not opened for some time afterwards; timber-culture application accompanying it is to be similarly regarded. 2-326

44. Executed by a minor may be rescinded on reaching majority where no fraud appears and the relinquishment is against his interest. 15-162

45. Entry canceled on, will not be reinstated to protect a transferee who alleges fraud, in the absence of evidence connecting the intervening entryman therewith. 16-140

46. The failure of a contestant to pay to claimant an alleged contract consideration for his relinquishment, duly filed, will not be considered. 2-621

47. A charge of fraud in procuring, will not be inquired into as between a contestant who files the same and another party having possession of a prior one where on contestant's charge and the evidence thereunder the entry should be canceled. 16-288

48. An entryman who executes a, and delivers same to a creditor to secure pay-

ment of a debt, is not entitled to reinstatement, where it appears that it was filed on account of nonpayment of the debt and the rights of third parties have intervened. 22-398

49. The consideration that may have passed between the parties on the execution of a, is not a matter for departmental inquiry, except as an incident, in connection with other facts, tending to show that entryman was fraudulently deprived of his land. 22-150

50. The voluntary maker of a, must abide the consequences of the act. 3-181

51. Procured through misrepresentation is invalid. 37-169

52. Must be intentionally and voluntarily made; obtained through misrepresentation, deceit, or duress is void. 2-135; 3-376; 4-281; 8-192; 25-197

53. Executed for the benefit of one holding a confidential and fiduciary relation to the entryman can not be recognized as of any validity in the presence of a just and equitable adverse claim. 24-177

54. Under a, executed without consideration, and for the benefit of one holding a fiduciary relation to the entryman, it is incumbent upon the party presenting the same to show that no advantage was taken of the entryman, if the good faith of the transaction is called in question by him. 25-197

55. A party who seeks to invalidate a, on the ground that it was obtained from him while in a state of intoxication, must establish the fact that he was at such time deprived of the use of his reason and understanding through his intoxicated condition. 20-195

56. Executed by entryman while too intoxicated to comprehend the character of the instrument is ineffective. 2-325; 14-133; 16-25

57. Obtained while the entryman is so intoxicated as to be unfit for the transaction of business should not defeat the right of a deserted wife to enter the land involved. 15-555

58. An entry must be reinstated where cancellation thereof is due to a, procured from entryman while in a condition of insanity. 19-6

59. On presentation of, in due form, the local office is warranted in canceling the

entry in the absence of information that the instrument was executed by one of unsound mind. 13-541

60. In ascertaining the validity of a, the department may, in proceedings of its own, determine whether the person executing the same was of sound mind. 12-690

61. When procured from a person of unsound mind, by one aware of the mental unsoundness, the entry must be reinstated; and the intervening entry of a third party, in such case, is made subject to the right of the department to investigate the circumstances under which the relinquishment was obtained, and determine the good faith of such party in connection therewith. 26-163

62. Executed by one of unsound mind prior to a judicial determination of his legal status is not void, but voidable by himself, his heirs, or devisees. 12-690

63. To warrant vacation of action based on a, executed by one of unsound mind, some fraud, actual or constructive, must be charged and proven and a return of the purchase money tendered. 12-690

64. Executed by guardian of an insane entryman, under direction of a probate court, is unauthorized by law and invalid. 24-494

65. Not voluntary when made because of conflict and to avoid a contest. 1-45

66. Executed for use only in event of certain contingencies and left in possession of entryman's agent is of no legal effect. 9-609

67. Failure of local officers to promptly act upon, will not prejudice the rights of a subsequent applicant for the land involved. 10-673

68. Failure of the local office to act upon, will not defeat equities arising thereunder. 11-592

69. Failure of local officers to properly note of record their action upon a, will not defeat the right of another under a subsequent entry of the land embraced within said relinquishment. 15-21

70. Refusal of local office to act upon, should be followed up by appeal to preserve rights claimed thereunder. 4-532

71. That conforms to the requirements of the act of May 14, 1880, should be filed on presentation and the entry canceled. 20-365

72. Irregularities attending the execution of a, will not affect its validity if it expresses the will and purpose of the party making the same at the time when it is executed and filed. 17-396

73. It is not essential to the validity of a, that it shall be executed in writing on the receiver's duplicate receipt; it is sufficient if the proof offered satisfies the local officers that the entry is in fact relinquished. 28-448

74. Improperly rejected on account of form in the matter of acknowledgment. 3-546

75. Framed in terms of absolute and unconditional surrender of all rights claimed thereunder, is not limited in its operation by a statement therein that it is made for the purpose of making a new entry in lieu of the one relinquished. 11-344

76. Is not effected by an informal paper executed and held for the purpose of securing the payment of a note. 11-597

77. The fact of, may be accepted as established, though the record may fail to show such action, where abandonment of the land is shown, and where, from the action of the local office, it would appear that the entry was regarded as having been extinguished by release. 21-169

78. An instrument executed by a homestead entryman purporting to waive all claim to any mineral land embraced within his entry, but which does not in terms surrender any specific legal subdivision, and was evidently not intended as an abandonment of any specific tract, should not be regarded as a. 23-353

79. It is not requisite to the validity of a, under the act of May 14, 1880, that the signature of the entryman should be acknowledged before an officer. 17-396

80. No third party can acquire any standing as a contestant, intervener, or otherwise in a controversy about the validity of a relinquishment. 17-396

81. Execution of, is not in itself sufficient to warrant cancellation of an entry, but may be considered in determining the good faith of the entryman. 16-6

82. One executing, can not direct who shall receive the benefit thereof, but the naming of an intended beneficiary does not invalidate the instrument. 18-638

83. Of an entry is for the benefit of the United States only, and the issue in such case is between the Government and the entryman. 17-396

84. The purchaser of, does not secure a preferred right of entry. 15-441; 17-180

85. Purchaser of, acquires no right to the land as against the United States. 2-133; 6-246; 7-560; 9-269; 15-181

86. In the hands of a purchaser can not be made the basis of a contest by such purchaser. 13-495; 18-144, 358

87. It is competent for the department to investigate the circumstances attending the execution and filing of. 5-365

88. The purchase of an outstanding, and filing thereof, by the contestant during the pendency of the hearing does not necessarily affect the good faith of his contest. 19-509

89. Of the preferred right of entry when purchased may be filed without specific authority from the contestant. 5-294

90. Of the contestant's preferred right of entry leaves the land open to the first legal applicant. (See *CONTESTANT*, II.) 5-293

91. Of land covered by a preemption filing is a waiver of claim under the filing, and thereupon another's settlement made prior to the relinquishment takes effect. 2-620

92. Right of settler on land covered by the entry of another attaches at once on filing, and defeats an application to enter filed by a third party immediately after relinquishment. 13-192; 16-386

93. Of a timber-culture entry, accompanied by a homestead application of the entryman, does not defeat the adverse right of a settler then on the land. 13-148; 14-439

94. As between a party claiming under, and another asserting a prior settlement right, the claim of the latter must be recognized. 15-542

95. Accompanied by an application to enter cuts out a settler on the land. 4-123; 5-149

96. Accompanied by declaratory statement defeats simultaneous application to contest. 4-363; 10-139

97. Accompanied by application to enter, filed simultaneously with an affidavit of

contest, defeats the right of the contestant. 14-144

98. As between one claiming under, and another applying to contest, the judgment of the register at the time as to the matter of priority will be accepted in the absence of a clear showing of error therein. 13-541

99. Of entryman offered with application under a different law should be received and application allowed subject to adverse claims. 5-451

100. On relinquishment of a homestead entry the settlement of a prior settler, applying for homestead entry seven days after the relinquishment, takes effect under section 3, act of May 14, 1880. 2-117

101. Filed with an application to enter, returned because the deposit for fees and commissions was insufficient, should perhaps not have been returned with the application, but should have been made of record, so as to open the land to entry. 2-278

102. Filing of, will not disturb acquired adverse rights. 4-505

103. May not be attacked for want of genuineness by a party who does not establish the whereabouts and identity of the entryman. 3-593

104. Filed by a contestant will secure the right of entry though the contest may fail on the grounds alleged in the affidavit of contest. 5-5

105. Executed but not filed is not proof of abandonment of a homestead. 2-28

106. For value about a month after entry (timber culture) is proof of fraudulent inception of the entry. 2-92

107. Of a desert entry by one holding under an invalid assignment will not relieve the land from its previous state of appropriation. (See 38-253.) 22-369

108. Of desert entry should be followed by immediate cancellation and the land opened to entry without further action. 5-708; 6-1; 7-227; 8-371, 605; 10-673; 13-638; 14-123

109. Of timber-culture entry must be signed by the heirs in case of entryman's death. 1-121, 136, 149

110. Of a timber-culture entry by the executor and sole devisee warrants cancellation where it appears that compliance

with the law can not be shown within the life of the entry. 7-383

111. Of timber-culture entry exhausts the right of the entryman, and he can not be permitted to enter a second tract. 1-125

112. Of homestead entry may be executed by administrator, under direction of the court, on the finding of fact that no heirs exist qualified to succeed to the rights of the deceased. (See 29-565.) 6-672

113. The only persons entitled to call in question the legality of a, executed by an heir of the entryman are other heirs qualified to consummate the entry. 22-415

114. Of a homestead entry, executed by one claiming the status of sole heir of the deceased entryman, will not be accepted where it appears that said heir is a minor and that under the law of his domicile he is not competent to execute such an instrument. 30-37

115. By an administrator estops the widow of a homesteader from asserting a claim as such where for a term of years she acquiesces in his action and valuable adverse rights intervene. 15-262

116. No warrant of law authorizing the administrator of a deceased homesteader's estate to file. 15-264; 27-611; 29-565

117. In Kansas the father and mother inherit jointly the estate of a son who dies intestate, leaving no wife nor issue, and it therefore follows in the case of a timber-culture entryman who thus dies, having an entry in said State, that if the father subsequently dies before the entry is carried to patent a valid relinquishment requires the joint action of the mother and the heirs of the deceased father. 23-297

118. Executed and given to another to file constitutes a special agency that expires with the death of the principal. 18-301

119. Executed by entryman's father as agent and left with him for subsequent filing, but not filed until after the entryman's death; the law casts the homestead right on the widow, who was entitled to the land unless she actually or constructively ratified the relinquishment. 2-138

120. Of a homestead entry not presented during the lifetime of the entryman should not be accepted against the protest of the widow. 15-506

121. A homestead entry by one who purchased the improvements and relinquishment of a prior entryman will not be canceled to reinstate the former entry, in the absence of fraud or bad faith, merely because the relinquishment of the former entry was filed after the entryman's death. 38-475

122. As between the parties a sale of improvements and relinquishment of an entry is a valid contract, and though it conveys no right as against the United States, it is obligatory on the entryman and his heirs, and the equity of the purchaser to make entry may properly be recognized if exercised promptly and prior to the intervention of any adverse right. 38-475

123. There is no authority under the law for the wife of the entryman to file a, binding her husband, where it does not appear that the same is done with his consent. 19-515

124. Of a donation claim operates to restore the land to the public domain. 15-511

125. Of Indian allotment may not be made except under direction of the department. 12-162

126. Of a timber or stone claim prior to final proof confers no right on the party obtaining and filing it. 2-333

127. Filed pending contest and as result thereof inures to the benefit of contestant. 1-145; 3-225; 4-127, 587; 8-400; 14-306

128. Does not inure to the benefit of a contestant unless it be found that it was the result of the contest. 8-357; 11-210; 13-541

129. Filed after initiation of a contest does not inure to the benefit of the contestant where it is found that it was not filed as the result of the contest. 17-184

130. Can not be held to be the result of a contest, where, at date of its execution, notice had not issued on said contest, and the entryman in good faith had cured any default on his part that may have existed prior thereto. 25-359

131. Can not be held the result of a contest where it is made and filed without actual knowledge of said contest, and the principal charge therein is not sustained by the evidence submitted. 28-187

132. Filed during the pendency of a contest, but not the result thereof, does not inure to the benefit of the contestant. 21-333

133. A contestant is not entitled to the benefit of a, filed during the pendency of charges of such character, and so presented that it must be held that it was not the result of the contest. 22-71

134. If filed pending contest before local office and before the testimony is closed, it inures to the benefit of the contestant. 1-103, 155

135. When filed before the final disposition of a contest it should be treated as proof of abandonment and the case closed. 1-156

136. Filed pending and as the result of a contest (before the local officers) clears the record, and no further evidence in the contestant's behalf is required. 2-265, 311, 318, 619

137. Filed during the pendency of a contest and as the result thereof inures to the benefit of the contestant and excludes all rights under the subsequent application of another to proceed against the entry in question. 14-420

138. Made after initiation of contest, but before notice and without knowledge thereof, and subsequently filed by the purchaser on being officially informed that said contest has been finally closed, does not inure to the benefit thereof though in fact pending when the relinquishment is filed. 12-626

139. Where filed during appeal in a contest case, the land is open to the first legal applicant. 20-147

140. Filed during the pendency of an invalid contest and independently thereof leaves the land open to the first legal applicant. 12-492

141. Filed pending contest is presumptively the result thereof, though such presumption may be overcome. 2-283; 7-142; 9-110, 461; 11-210; 13-106, 497

142. Inures to the benefit of the contestant, if the result of the contest, though

the charge as laid therein may be insufficient. 10-105; 19-8

143. Filed prior to day of trial in a pending contest (for illegal inception) may be taken as an admission of the charge. 2-291

144. Filed with notice of pending application and contest is in aid of the latter. 4-455

145. Does not inure to the benefit of a contest that is initiated for the purpose of fraudulently defeating rights acquired in good faith under said relinquishment. 14-383

146. Filed is in aid of pending suit charging sale thereof. 4-522

147. May inure to the benefit of second contestant if the first contest is shown to be fraudulent. 4-504

148. Filed after the final dismissal of a contest does not inure to the benefit of the contestant. 2-282; 6-236; 24-428

149. Made after affidavit of contest is filed but before notice issued thereon, and without knowledge of said contest, does not inure to the benefit thereof. 7-46

150. Not the result of a contest when made before and filed after the proper dismissal thereof. 4-413

151. Obtained and filed by stranger to contest and subsequent thereto of no avail to contestant. 1-103

152. Executed after a hearing on a contest, and award of preference right thereunder to the contestant, can not operate to defeat or impair the right so recognized. 21-474

153. Filed pending contest does not defeat the right of the contestant to be heard on the charge as laid. 4-505;

8-357; 9-269, 440, 461; 10-256, 302, 398; 11-65; 13-34, 196; 15-320;

16-329; 18-92, 108; 19-175; 20-334

154. Has no effect on the right of the contestant if its aid is not invoked by him. 9-440

155. Does not defeat the right of a contestant if the cancellation is the result of the contest. 13-437; 16-514

156. Filed after the initiation of a contest, and independently thereof, will not defeat the preferred right of the contestant, if the facts shown at the hearing require the cancellation of the entry on the ground charged. 29-171

157. The right of a contestant, who establishes the truth of his charge, not defeated by relinquishment and the intervening entry of a third party, where the cancellation is the result of the contestant's action. 20-179

158. Right to proceed against an entry not defeated by subsequent relinquishment and the intervening filing of another. 11-525

159. The ruling that does not permit a, filed after initiation of contest, but prior to notice, to defeat the right of a contestant, is not applicable to a second contest filed subject to the disposition of the pending suit. 20-365

160. Filed during a contest leaves the land open to entry by the first legal applicant, subject only to the preferred right of contestant; and other contests then pending against said entry abate on the cancellation thereof. 20-3

161. Filed pending proceedings by the Government takes effect at once, and the land is thereafter open to the first legal applicant, subject only to valid adverse claims. 26-337

162. Filed by a contestant can not defeat the right of an intervener to be heard who sets up fraud and collusion as against the contest. 13-24

163. If an entry is relinquished pending attack by several parties alleging priority of settlement, the question of priority should be determined before allowing either of the parties contestant to make entry of the land involved. 26-177

164. A contract to sell the relinquishment of a homestead entry is not in violation of the oath required of a homestead applicant by section 2290, R. S., as amended by the act of March 3, 1891, and is no ground for cancellation of the entry if good faith on the part of the entryman at the time of making his entry is apparent. 32-139

165. By a desert-land entryman, accompanied by his application to select the land in lieu of other land within a forest reserve deeded by him to the United States under the act of June 4, 1897, which relinquishment and application are made for the express purpose of completing title by exchange under said act instead of by compliance with the desert-land law, is not

absolute in effect, but conditioned upon acceptance of the application to select; and where such application is not allowed, and entries of the relinquished land are permitted to be made by other parties, claimants under such entries will be required to show cause why their entries should not be canceled and the original desert-land entry reinstated. 32-260

166. Where a relinquishment is tendered, and there is filed therewith and as part of the same transaction an application, by or in the interest of the person relinquishing, to make some other appropriation of the same land, the relinquishment must be regarded, for all purposes of such application, as in force at the moment of its presentation, but not effective as to the public generally, so as to make the land subject to other appropriation, until the application is considered and disposed of. 33-595

167. A relinquishment filed with an application for repayment, in compliance with the repayment statute, should be treated as part of such application and accepted only in event of approval of the repayment claim. 37-352

REPAYMENT.

I. Generally.

II. "Erroneously Allowed."

III. "Canceled for Conflict."

IV. Assignees.

V. Double Minimum Excess.

VI. Desert Land Entry—Compactness.

VII. Act of March 26, 1908.

VIII. Act of February 24, 1909.

I. Generally.

1. Circular instructions of January 22, 1901. 30-430

2. Circular of July 23, 1910, under act of June 16, 1880. 39-141

3. The first comptroller may refuse to pass an account for, if he is of opinion that the proof required by law has not been made, though the proof submitted may be deemed sufficient by the department. 19-286

4. Proof of loyalty required in claims for, arising prior to April 13, 1861. 19-286

5. Right to, not recognized in the absence of express statutory authority.

5-114, 316; 7-295; 8-102, 462; 9-49, 62; 10-12; 25-111

6. Laws providing for, applicable where the consideration is carried into the Treasury as cash. 1-533

7. Right to, not saved because payment was made under protest. 2-688; 3-555

8. The statute does not authorize the return of the purchase price on the ground alone that the entryman might have secured patent without such payment. 29-188

9. An unearned cancellation fee should not be returned to anyone except the depositor, in the absence of due authority shown to receive the same and receipt therefor. 20-245

10. On application for, under an entry canceled for fraud, the applicant will not be permitted to go back of the judgment of cancellation and show that in fact there was no fraud. 24-493; 27-59

11. A final decision under which a desert-land entry is canceled, on account of the nondesert character of the land, can not be impeached collaterally on application for. 24-536

12. If an entry on the proofs presented is properly allowed, and on subsequent investigation is canceled, the fact that such cancellation is erroneous, under a changed construction of the law, will not justify. 25-210

13. The statutory provisions regulating, do not include the erroneous cancellation of an entry among the cases where a return of the purchase money may be made. 26-419

14. Of an alleged excess paid on the purchase of an isolated tract can not be allowed, where the bid and payment are voluntary, and not for the protection of any interest of the purchaser. 29-320

15. There is no statutory authority for, where the entry fails through no fault or error on the part of the Government. 4-262; 13-359

16. The provisions of 2362, R. S., and of the act of June 16, 1880, with respect to, contemplate relief only in cases where, for some reason not within the entryman's control, title to the land can not be passed by the Government. 24-575

17. Is not authorized where the entry is of land subject thereto and might have been confirmed if the entryman had complied with the law. 21-5

18. Where it appears that money has been received by the Government through error or mistake it should be returned. 3-69

19. Upon application for repayment the land must be relinquished; the Land Department will not act on a conditional relinquishment, nor without full compliance by the applicant with the terms of the act. 4-229

20. On application for the return of purchase money by a patentee who was required to purchase under section 5, act of March 3, 1887, when in fact the land passed by the railroad grant under which he held, the applicant should surrender the patent, but should not be required to execute a deed of relinquishment. 24-256

21. Relinquishment accompanying an application for, does not defeat the right of. 10-34

22. Right of, not impaired by relinquishment filed under the advice of the General Land Office. 8-423

23. The fact that the United States has no title to land embraced in an entry at the date of its allowance and subsequent relinquishment, does not warrant, where the relinquishment is solely due to the entryman's intention to abandon the land, and relinquish all rights under the entry, and not to any knowledge or belief on his part that the entry could not be confirmed. (See 30-355.) 27-600

24. A desert-land entryman who fails to reclaim part of the land in his entry, and thereupon relinquishes such tract, is not entitled to, of the money paid on the tract so relinquished. 24-542

25. The right to, does not exist where an entry is voluntarily relinquished and canceled for such reason only. 27-363

26. Where one who on filing application furnished proof of desert character, relinquished the tract voluntarily, and asked repayment on the ground that it was not desert land, he is estopped by his proofs from denying its character; repayment denied. 2-693

27. Should not be denied on the ground that the entry was "voluntarily relin-

quished" when the relinquishment was accepted "without prejudice" under a decision that the Government could not give title to the land entered. 6-334

28. Not allowed on voluntary relinquishment where the entry is not erroneously allowed and is susceptible of confirmation. 1-40, 529, 531; 2-692; 5-527

29. The purpose of the act of June 16, 1880, in requiring relinquishment of all claim under the entry, and cancellation thereof, prior to allowance of, is to prevent any assertion of right under such entry after repayment; and such purpose is fully satisfied where the applicant, who has received patent for the land, in obedience to a judicial decree executes a deed for the land to another, who by such decree is adjudged entitled to receive the Government title. 26-328

30. A relinquishment filed with an application for repayment, in compliance with the terms of the repayment statute, should be treated as part of such application and accepted only in event of approval of the repayment claim. 37-352

31. Not allowed in case of patent prior to deed of relinquishment duly recorded in the proper office of registration where the land is situated. 4-293

32. Not allowed for entry relinquished on account of untillable character of land where the entry is made without actual knowledge of the character of the land. 4-133

33. Of the fees and commissions paid on an entry will not be allowed where the entry is relinquished on account of the undesirable character of the land and a second entry made. 24-255

34. The only person qualified to apply for, is the one in whom the title to the land is vested at the date of the cancellation of the entry, or the heirs of such party. 14-101

35. In application for, by an entryman he must show that the land is free from incumbrance. 24-246

36. Fees paid on homestead or timber-culture entries canceled for conflict or because they have been erroneously allowed and can not be confirmed will no longer be credited upon new entries, but will be repaid on proper application, as prescribed in circular of August 6, 1880. 2 661; 10-469

37. Application for, should be made when second entry is allowed, instead of asking credit on second entry for fees paid on first. 8-229

38. Of the fees and commissions paid on the first entry will not be granted, where a second is allowed, in the absence of such error on the part of the Government in allowing said entry as would defeat its confirmation. 20-551; 21-209

39. Of fees and commissions allowed, where entry was canceled because made on land occupied and improved by another. 2-117

40. Where a homestead entry is allowed subject to adjustment to a farm unit, when established, under the reclamation act, the entryman is entitled, upon such adjustment, to repayment of the fees and commissions paid on the land entered in excess of that finally allowed him. 39-90

41. Where the entry was a second entry and illegally made, but at date thereof the local officers were ignorant of the prior entry, repayment of fees and commissions is refused. 2-682

42. Of fees and commissions allowed where entry could not be amended because of intervening adverse rights. 2-255

43. Of fees and commissions may be allowed where the entryman, to avoid conflict resulting from an error in the local office, in good faith relinquishes his entry and takes another tract. 19-243

44. Allowed for fees and commissions charged on additional homestead entries made under the act of March 3, 1879. 1-525

45. Under section 1, act of June 16, 1880, fees and commissions paid by one who in good faith purchases certificates of soldiers' additional rights, and locates the same, may be repaid, where the entries so made are thereafter canceled on the ground that they were based on spurious and forged papers. 21-248

46. Of fees improperly collected for taking testimony should be made to the principal and not to the attorney. 3-125

47. Fees improperly received for taking testimony to be returned to the person paying the same. 3-160

48. Fees received by the local office since August 4, 1886, for reducing to writing

testimony in support of an entry may be repaid. 14-645

49. Of the one dollar deposited for notice of cancellation will not be granted on the ground that the fee was unearned where the record shows that the contestant must have received notice of cancellation. 19-517

50. Of final proof fees improperly collected and paid into the Treasury can not be allowed. 9-60

51. Of half the fees paid by a railroad company on list of selections where certified for the joint benefit of two companies denied. 3-410

52. The filing fee on a preemption declaratory statement may be properly repaid under section 2, act of June 16, 1880, where the entry can not be confirmed, and the application is in other respects entitled to favorable action. 20-160

53. The filing of a preemption declaratory statement is not an entry within the meaning of the repayment act; hence repayment of the fees and commissions paid on such statement can not be allowed. 31-122

54. The repayment provided for by the act of June 16, 1880, is limited to *entries*; and repayment of moneys deposited with the local officers in anticipation of an entry which was never allowed, and carried into the Treasury, is not authorized by said act. 36-265

55. Of the filing fee paid on a canceled reservoir declaratory statement can not be allowed if such declaratory statement was not erroneously received, even if it be considered an "entry" within the meaning of the act of June 16, 1880. 29-400

56. A reservoir declaratory statement is not an "entry" within the meaning of the repayment act; hence the fees paid on such statement can not be repaid if it is subsequently canceled for conflict. 29-660

57. Where selections were made by the railroad company (North & South Alabama) under act of June 22, 1874, but rejected because the odd sections whereon based were disposed of before definite location, repayment of fees and commissions may be made. 2-681

58. The right of, can not be recognized on the cancellation of a desert entry for failure to submit final proof within the

statutory period, when it appears that the entry was not erroneously allowed. 26-283

59. Of the purchase price of the land can not be allowed a desert entryman who fails to furnish supplemental proof of reclamation, properly called for by the local office, and abandons his claim to the land. 24-308

60. Of the money paid on a desert entry can not be made where such entry is properly allowed on the proofs presented, but, on subsequent proceedings, is canceled on account of the nondesert character of the land. 24-536; 25-110

61. The act of entering land under the desert land law carries with it the necessary implication that the land is susceptible of reclamation, and the entryman is not entitled to repayment of the purchase money paid on such entry on the ground that the location and position of the land is such that it can not be reclaimed. 32-668

62. The act of March 3, 1877, places the burden of proof as to the character of the land upon the entryman and his witnesses, and where he states in his declaration that he has personally examined each legal subdivision, repayment of the money paid on such entry will not be made on the ground that the land is not of the character contemplated by the law. 32-668

63. Can not be allowed to a desert entryman who fails to secure a permanent water supply, in the absence of diligence shown in such matter. 12-78; 13-396; 19-505; 27-589

64. Allowed where a tract forming part of a desert entry is relinquished because nonirrigable, the entry having been made in good faith and prior to survey. 6-665

65. Where the entry (commuted homestead) was canceled for laches or fraud of the entryman, exhibited in his final proofs, repayment of purchase money is denied. 2-686

66. Will not be allowed if the entry is canceled on account of its fraudulent character or because it was secured through false testimony. 1-528, 535; 2-598; 5-319; 8-322; 9-103; 10-553; 12-130, 607

67. No right of, exists where a preemption entry is canceled because the pre-emptor prior thereto exercised his pre-emption right, and the record shows that

he swore falsely, in support of his second entry, that he had never had the benefit of the preemption law. 25-29

68. Where hearing was ordered on allegations impeaching the good faith of the entryman, and on default by him the entry was canceled on the evidence, repayment is refused. 2-690

69. Not allowed where a false oath is made as to the matters required in section 2262, R. S., as forfeiture of the purchase money is a statutory result. 2-683, 685; 9-160

70. Will be denied if the entry was procured by false testimony; and the "conviction of the entryman before a jury on a charge of perjury" is not required to give the department jurisdiction to determine the character of the testimony. 15-26

71. Of the purchase price paid for coal land is not authorized where the entry is canceled on account of fraudulent character. 15-146

72. Will not be allowed on a canceled mineral entry that was secured through fraudulently suppressing the fact that said entry was for the benefit of a foreign corporation. 20-379

73. Of the purchase price paid on a mineral entry can not be allowed, where the entry is canceled for failure to supply supplemental proof, and it is not made to appear that the entry could not have been confirmed. 29-188

74. Where a pre-emptor had made final proof and (it transpiring that he had also made a homestead claim during the life of his preemption) afterwards relinquished it, since the entry was not canceled through fault of the Government, repayment of purchase money is denied. 2-684

75. May be allowed if the entry is canceled for insufficiency of the proof where there was no fraud or concealment and the local officers held the proof sufficient. 3-518; 7-474, 509; 9-259

76. In the absence of fraud, may be allowed where an entry is canceled for failure to comply with the law as to residence. 6-694

77. May be allowed when it is impracticable for claimant to comply with an

order requiring new final proof, and good faith is apparent. 10-34

78. Can not be allowed under a homestead entry canceled for failure to comply with the law. 12-523

79. Can not be allowed under a homestead entry canceled for failure to submit final proof within the statutory period. 12-535

80. May be allowed where commutation proof made in good faith is found insufficient in the matter of residence and the entryman, not being able to show further compliance, relinquishes his claim to the land. 8-162, 423

81. Right of, recognized where the entry was allowed on final proof irregularly submitted and the entryman can not make new proof as required. 8-636

82. Can not be allowed to one who voluntarily commutes his entry and then claims that his final proof shows that he was entitled to patent without payment. 7-295

83. Not authorized by the fact that the homesteader is entitled to take the land under section 2291, R. S., if he elects to make cash entry 9-261

84. Not allowed to one whose commuted homestead entry is suspended for further proof, and who thereupon seeks to recover the purchase price, with the privilege of thereafter submitting new proof under section 2291, R. S. 12-623

85. With the right to thereafter submit ordinary homestead proof, can not be allowed to one whose commutation proof is found insufficient but whose entry is not canceled. 8-84

86. Where the cash certificate issued upon commutation proof is canceled and the proof rejected on the ground that the entryman had not sufficiently complied with law to entitle him to commute, and the entry is permitted to remain intact subject to future compliance with law, the entryman is not entitled to repayment of the commutation purchase money paid upon his entry; and the only relief to which he is lawfully entitled is that, upon subsequently showing proper compliance with law, he may have the money paid in connection with his first application to commute credited upon a second such application 39-152

87. Allowed where through mistake the settlement and improvements of the entryman were not on the land covered by the entry and it was accordingly canceled. (See 27-448.) 8-188

88. Will not be allowed where a timberland entry is canceled because the land is not subject thereto and the entry was made without personal knowledge of the land. 7-10

89. May be allowed on cancellation of timber entry because the land is not subject to such appropriation where fraud does not appear. 7-40

90. Allowed where a timberland entry made in good faith is canceled on the ground that the land is not of the character subject to such appropriation. 12-431

91. Where an applicant under the timber and stone act states in his declaratory statement that he has personally examined the land applied for, when as a matter of fact he has not done so, but in his final proof swears that no inspection of the land has ever been made by him, entry on such proof can not be allowed, but as the purchase money paid by him upon submission of the proof still remains in the control and custody of the Land Department, repayment thereof may be made. 34-705

92. An entry under the act of June 3, 1878, of land subsequently found fit for cultivation on the removal of the timber, and canceled for such reason, will not, in view of the late construction of said act, be held fraudulent in character on application for, where it appears to have been made with no intention of fraud on the part of the entryman. (See 25-111.) 22-337

93. May be allowed for a timberland entry made on proof prematurely submitted. 9-611

94. Not allowed because the character of the land does not suit the entryman and he therefore desires to secure a return of the purchase price. 1-40

95. Where a person was misled as to the character of the land by a private survey and relinquished his claim, as responsibility for the mistake does not rest on the Government, repayment is denied. 2-694

96. On cancellation of timber-culture entry because the land was not subject thereto not allowed, the entryman without personal knowledge having made oath that the land was devoid of timber. 6-398

97. May be allowed on cancellation of timber-culture entry if the entry was made in good faith though the land was not "devoid of timber." 6-656

98. Return of surveyor general's scrip, paid on the commutation of a timber-culture entry, not allowed on the ground that the entryman might have perfected title without commutation. 25-160

99. No authority for return of purchase money paid on commutation of timber-culture entry and allowance of new proof under the act of March 3, 1893. 21-287

100. A timber-culture entry is limited in acreage to one fourth of the land embraced in any section, except where the entry is of a technical quarter-section, and an entry not of a technical quarter-section, but embracing all of a fractional section, is in violation of law and can not be confirmed, and repayment of the fee, commissions, and excess purchase money paid thereon may be allowed. 33-372

101. Allowed where illegal entry was made through ignorance without fraud or bad faith on the part of the entryman. 3-520

102. The act of June 16, 1880, does not contemplate repayment where the entry (indemnity scrip location) was founded in fraud (delivery of scrip to one whose claim was without right) even though the assignee was ignorant of the fraud. 2-429

103. May be allowed of money paid for land in excess of the area actually embraced in the entry. 7-32

104. An applicant for repayment of money paid for area in excess of that actually embraced in the entry, will be required to furnish nonalienation affidavit or to show fully the nature, terms and conditions of any sale and conveyance of the land. 34-471

105. Circular of April 2, 1907, under act of March 2, 1907, relative to repayment of excess. 35-492

106. The act of June 16, 1880, does not authorize repayment of an excess or overcharge, due to miscalculation, after the

money has been covered into the Treasury. 35-580

107. Must be denied where the entry is made with full notice of the rights of a prior settler and is voluntarily relinquished on account of the conflict. 4-262

108. There is no authority for repayment of moneys deposited under section 2356, R. S., in excess of the cost of the land purchased at private entry. 2-659

109. Of interest on deferred payments under an Osage entry not authorized by statute. 14-204

110. Can not be allowed of money deposited to cover the cost of office work on the survey of a mineral claim though the deposit is not expended. (See 36-561.) 8-102

111. Section 2402, R. S., authorizes repayment to the depositor of the unearned portion of a mining survey deposit. 36-561

112. May be allowed on cancellation of an entry made in good faith for a tract of swamp land. 10-39

113. No claim for, where one purchases land from the State, claimed by it as swamp, and it subsequently appears that such land did not pass under the swamp grant. 10-393

114. May be allowed in case of graduation entry erroneously allowed for land that passed under the swamp grant. 8-621

115. Not entitled to, on failure to comply with terms of purchase of Indian trust land under the act of July 5, 1876. 1-529

116. And reimbursement provided by act of March 3, 1887, in case of settlers and purchasers within the limit of the grant to the Northern Kansas Railroad. 5-627

117. Will not be allowed of money deposited with the receiver as agent of the applicant. 8-77

118. Payment of the purchase price to the receiver before acceptance of final proof is at the risk of the purchaser, and if said proof is rejected and the receiver fails to account for the money so paid, the right to, from the Government can not be recognized. (See 25-188.) 23-282

119. No authority to return purchase money paid to the receiver before the local

office is ready to act on the application for the land. (See 25-188.) 22-322

120. Not authorized where the purchase price of land has been twice paid. 5-114

121. No statutory authority for, where the receiver fails to account for the purchase price of land and the entryman pays therefor a second time. 14-236

122. Where entry has been made by scrip assigned by a fraudulent holder, repayment will not be made to the assignee entryman notwithstanding his ignorance of the fraud, and especially where he was not the legal representative of the confinee. 2-429

123. No authority for, to one holding under a patent rightfully issued, but claiming such right by virtue of another title derived through a different source. 7-99

124. Of the bonus voluntarily paid for an entry where two or more applications were simultaneously made and the preferred right of entry was put up at auction is denied. 2-687, 688, 689; 3-555

125. The right to, recognized where the privilege of contesting an entry was successfully bid for, but the contest dismissed on account of a prior suit of record. 3-67

126. The failure of the Chicago, Milwaukee & St. Paul company to build its road within the time stipulated forfeited its right of way by its own default, and it is not entitled to repayment of the money advanced therefor. 21-324

127. Money paid to the Secretary by a railroad company to secure a right of way across an Indian reservation, under an agreement which could not be carried into execution without the ratification of Congress, should be returned when Congress subsequently provides for a preferred right of purchase on behalf of the company on the performance of certain conditions, and such right is thereafter forfeited on account of the failure to perform said conditions. 26-290

128. A decision denying the right of, and long acquiesced in will not be reopened. 8-134

129. Application for, pending appeal from order of cancellation is a waiver of the appeal. 5-409; 9-643; 11-624

130. Where transfer of payment is denied, and the applicant fails to appeal, his rights in the premises are lost by such

failure, and can not be recovered through a subsequent application for repayment. 21-5

131. Where land is paid for in part by cash and in part by a military bounty land warrant, the Secretary has no authority, in allowing, to draw his warrant upon the Treasury for a sum larger than the cash payment. 24-539

132. While there is no statutory authority by which the Secretary may set off a demand of the United States against the claim of an individual for, the department will not certify such a claim to the Treasury with knowledge of a probable valid demand of the Government against the claimant, without an ascertainment of the existence and extent of such demand. 28-163

133. The return of purchase money, in case of an entry erroneously allowed and canceled, may be made on the application of one who shows a partial interest, according to the proportion of his interest. 24-490

134. The provisions of section 7, act of March 3, 1891, do not in terms nor by implication have any application to the matter of. 24-493

135. In adjudicating an application for repayment of fees paid in connection with railroad selection lists, based upon the elimination of tracts therefrom by cancellation, the list should be taken as the unit and the matter adjusted under the rules in force at the time the selection was made; and in making the adjustment the Land Department may take into consideration all the lists filed by the company, and is not confined to the lists upon which the application for repayment is based. 33-262

136. The act of April 23, 1904, providing for the disposition of the Rosebud Indian lands, fixed the price of all lands entered or filed upon within the first three months after opening at \$4 per acre, those entered or filed upon during the second three months at \$3 per acre, and those entered or filed upon after the expiration of six months at \$2.50 per acre.

Held: That where a tract was entered during the first three months the price thereof was thereby fixed for all time at \$4 per acre, and in event of cancellation

of the entry it could not thereafter be again entered except upon payment of such price, regardless of whether the second entry was made during or after the expiration of the first three-month period.

38-213

137. Lands in the Devils Lake Indian Reservation, opened to entry under the act of April 27, 1904, at \$4.50 per acre, which at the date of the proclamation of June 8, 1907, reducing the price of the remainder of said lands then unreserved and undisposed of to \$2.50 per acre, were embraced in an Indian allotment of record, or were in a state of reservation by virtue of the act of April 23, 1904, reserving lands for a period of 60 days after cancellation of an allotment covering the same, did not fall within the purview of the proclamation; and a subsequent entryman of the land was properly required to pay at the original rate of \$4.50 per acre, and is not entitled to repayment of the difference between the two rates as excess. 39-434

138. The inadvertent inclusion of a tract of Sioux Indian lands in a homestead entry, at a time when the land was rated at 75 cents per acre, which entry was subsequently amended to describe in lieu of the tract entered the tract actually settled upon and intended to be taken, does not have the effect to fix the price of the erroneously entered tract at 75 cents, the status thereof remaining the same with respect to price as though the erroneous entry had never been made; and where a subsequent entryman was required to pay 75 cents per acre therefor, after the price of all undisposed-of Sioux lands had been reduced to 50 cents, under the belief that the price had been fixed by such previous entry, he is entitled to repayment of the excess. 38-313

II. "Erroneously Allowed."

139. Excepting instances of cancellation for conflict, the criterion by which to determine whether repayment is authorized by section 2, act of June 16, 1880, is not. What was the reason for the cancellation of the entry? but, Was the entry erroneously allowed and not susceptible of confirmation? 30-362

140. Where an entry was erroneously allowed, and could not have been confirmed, the reason which led the entryman to relinquish his entry is of no moment and can not affect the right of repayment. 30-355

141. Can not be allowed in the case of a desert entry canceled because made for speculative purposes and for land not desert in character. 11-313

142. Should be allowed if "from any cause" the entry was erroneously allowed and no fraud appears. 1-526, 532

143. In case of an entry that is "erroneously allowed" for land not subject thereto, and canceled for that reason, may be granted without inquiry as to the truth or falsity of the final proof. 23-137

144. An entry is not "erroneously allowed" where the alleged defect is not of such character as to necessarily defeat confirmation of the entry, and might have been cured on compliance with the requirements of the General Land Office. 28-551

145. In the absence of evidence that an entry was erroneously allowed and could not be confirmed, any doubt on the subject must be resolved in favor of the Government as against the applicant. 33-437

146. Only allowed where title can not be given. 4-187, 293; 8-462

147. Allowed where entry can not be confirmed in its entirety. 5-527

148. Construction of the phrase "erroneously allowed" in the act of June 16, 1880. 2-694; 7-509

149. Entry is not "erroneously allowed" if obtained by false testimony. 9-103

150. The right to, does not exist where the entry is properly allowed on the proofs presented, but is subsequently canceled on the ascertainment that it was procured on the false and misleading representations of the entryman. 25-30; 26-3; 28-422

151. Where land entered under the desert-land law is not of the character subject to entry under that law, but is expressly represented by the entryman to be of such character, and the entry is allowed upon such representation, the entry is not "erroneously allowed," and the

entryman is not entitled to repayment of the purchase money. 25-111; 32-667

152. Where procured by misrepresentation, the entry is not "erroneously allowed," and repayment of the fee and commissions will not be made. 33-318

153. The right of, does not exist where a desert entry, on the proof presented, is properly allowed and its subsequent cancellation is due to the discovery that through mistake, not the fault of the Government, the entry in fact covers land not reclaimed or intended to be entered. 27-272, 448

154. The term "erroneously allowed" has reference solely to erroneous action on the part of the Government, and furnishes no authority for repayment where by reason of mistake in description a timber and stone entry is made for land not intended to be entered. 37-234

155. A desert entry of land within a prior preemption filing is not "erroneously allowed," though subject to the subsequent assertion of the preemptor's right. 24-575

156. Where an applicant in good faith applies for and is erroneously allowed to make desert entry for an amount of land which, added to that embraced in a prior homestead entry, aggregates more than 320 acres, and the desert entry is for that reason canceled as to the area in excess of such amount, the entryman is entitled to repayment of the purchase money paid on such canceled portion. 33-272

157. Where patent issues on an entry erroneously allowed, and the patentee, under a suit to quiet title, is adjudged to hold the title in trust for another and required to convey the land to the successful party in such proceeding, and so does, and thereafter applies for repayment, the Land Department is without jurisdiction to cancel of record the entry so allowed, but may properly regard it as no longer a subsisting entry of the applicant requiring cancellation. 28-133

158. A homestead entry commuted for townsite purposes on proof which discloses that at the date the original entry was made it was the intention of the entryman to take the land for such purposes, is "erroneously allowed." 27-580

159. The fact that the acts of the entryman contributed to or caused the erroneous entry ought not to deprive him of the remedy where he has acted in good faith. 3-520; 7-509

160. An entry allowed by the local office on testimony afterwards rejected as insufficient by the General Land Office or the department is an entry "erroneously allowed," for which repayment may be accorded in the absence of bad faith. 8-423; 14-514; 17-489; 20-374; 26-284

161. Of the purchase money paid on a preemption entry, canceled because the land is more valuable for its deposits of building stone than for agriculture, may be allowed, where the entryman acted in good faith and it does not appear that he knew or believed that the land was more valuable for its deposits of stone than for agricultural purposes. 33-270

162. Where entry under the act of June 3, 1878, was erroneously allowed for land chiefly valuable for mineral and upon which mining claims had been located and improvements made prior to the timberland entry, but of which the entryman had no knowledge, and it appears that he acted in good faith and did not procure the entry through misrepresentation, repayment of the purchase money may be allowed. 34-263

163. May be accorded in case of a homestead entry "erroneously allowed" of Alabama lands reported "valuable for coal" prior to the act of 1883 and not subsequently offered. 9-643

164. An entry made on relinquishment of a prior entry, under the mistaken belief of the local office and the entryman in the *bona fide* character of said relinquishment, when in fact it was fraudulent, is "erroneously allowed," and the entryman is entitled to repayment of the fees and commissions paid thereon. 22-615

165. A timberland entry made on proof prematurely submitted is "erroneously allowed." 9-611

166. An entry made during the pendency of an appeal involving the land is "erroneously allowed," and the purchase money should be repaid if the entry can not be confirmed. 23-414

167. May be accorded under a timber-land entry "erroneously allowed" without requiring the claimant to proceed with his application as against an intervening claim. 9-611

168. The fact that an entry may have been "erroneously allowed" is no ground for, if said entry could have been confirmed if the entryman had not voluntarily relinquished the same. 27-194

169. Desert entry allowed on insufficient evidence of reclamation is "erroneously allowed," and if subsequently relinquished on account of inability to show reclamation repayment may be allowed in the absence of bad faith. 8-491

170. A desert entry made in good faith under the general act of 1877 by one who has theretofore had the benefit of the special act of 1875 is "erroneously allowed," and repayment may be properly allowed. 23-61

171. Where a desert-land declaration is filed under the Lassen county act of 1875, and, prior to expiration of such filing, a declaration for the same land is filed and accepted under the general act of 1877, the latter declaration is not "erroneously allowed" within the meaning of the repayment act. 29-145

172. A desert entry of land subject thereto under the desert-land law is not "erroneously allowed," though the land, on account of its proximity to a military reservation, may have been excluded from settlement and location under the act of March 3, 1853, extending the preemption law to the State of California. 27-363

173. Of the first installment paid on a desert entry can not be made where the declaratory statement is canceled on account of its fraudulent character. 26-673

174. Of the first installment paid under a desert entry not allowed in the absence of due showing that the failure to perfect entry was not the fault of the entryman. 9-670; 10-12

175. Of the first installment on a desert entry, paid at the time of filing the declaratory statement, must be denied, where said payment and declaratory statement are properly accepted, and the subsequent cancellation of the entry is due to the entryman's noncompliance with the requirements of the desert-land law. 29-438

176. Where a desert-land applicant failed for three years to comply with the law (alleging inability to obtain water) and relinquished voluntarily, repayment of the purchase money is denied. 2-691

177. One who submits final proof and secures patent on part of the land embraced in his entry, and relinquishes the remainder, and then applies for return of the money paid on the relinquished tract, will not be heard to say that his entry was "erroneously allowed." 28-17

178. Where an entry has been erroneously allowed in part, or has been canceled in part for conflict, the entryman may relinquish the entry in its entirety, or retain and perfect his entry as to that part left intact. But a relinquishment of a specific part, in such case, is equivalent to a declaration of an intention by the entryman to avail himself of the benefit of his entry as to the remainder, and if such part is subsequently canceled for noncompliance with law, he is not entitled to repayment therefor. 28-422

179. The indemnity withdrawal made March 22, 1867, on account of the grant of July 27, 1866, for the Southern Pacific, was in violation of law and without effect, and did not operate to reserve the lands covered thereby from entry; hence a homestead entry of lands while included in the withdrawal was not, for that reason, an entry erroneously allowed that could not be confirmed, and repayment of the fees and commissions paid by the entryman is not authorized. 31-270

180. Section 2357, R. S., fixing the price of alternate even-numbered sections within railroad limits at \$2.50 per acre, was not modified or repealed by the desert-land act of 1877; hence an entry allowed under said act, prior to the passage of the amendatory act of 1891, at the rate of \$1.25 per acre, was erroneously allowed and could not be confirmed, on the payment of such price, and the entryman is therefore entitled to repayment. 31-277

181. Where an entry, not "erroneously allowed," is canceled for failure to effect reclamation within the statutory period, the entryman is not entitled to, on a showing that he did not reclaim the land because he believed it might be held subject to a railroad grant. 28-22

182. If the greater portion of a legal subdivision included in a desert entry, made prior to survey, is found, upon survey, to be within an alternate odd-numbered section which had passed to a railroad company under its grant before the entry was allowed, said entry was "erroneously allowed and can not be confirmed," and the entryman is entitled to repayment. 30-362

183. Of the entire amount of purchase money paid on a desert entry will not be made, on the ground that the entry was erroneously allowed and could not be confirmed because in conflict in part with a prior existing entry, where the portion not in conflict was never relinquished and no action was ever taken by the entryman indicating an election to take none of the land because he could not get it all; but repayment may be allowed as to the portion in conflict. 33-224

184. In making selections of desert lands under section 4, act of August 18, 1894, the burden is upon the State to show that the selected lands are of the character contemplated by the act; and where the lands selected are not of such character, but are expressly represented by the State to be of that character, and upon such representations the selections are accepted by the local officers, such selections are not "erroneously allowed," and the State is not entitled to repayment of the fees paid thereon. 33-374

185. The grant of sections 2, 16, 32, and 36 in every township, made to the future State of Utah by section 6, act of July 16, 1894, for the support of common schools, did not become effective until the admission of the State into the Union; and a desert entry of a portion of the granted lands, made subsequently to said act but prior to the date of admission, was not erroneously allowed, but might have been confirmed upon proof of compliance with law, and the entryman is therefore not entitled to repayment of the purchase money paid thereon. 33-223

186. During the pendency of the suit to establish the title of the United States to certain lands in California within the conflicting limits of the grants in aid of the Southern Pacific branch line and the Atlantic & Pacific Railroad, and to de-

termine the *bona fides* of alleged purchases thereof from the Southern Pacific company, such lands were not subject to disposal, and purchase made of any such lands during such time under section 5, act of March 3, 1887, by one adjudged in the pending suit not to be a *bona fide* purchaser, is an entry erroneously allowed, which can not be confirmed within the meaning of section 2, act of June 16, 1880, and the purchaser is entitled to repayment of the money paid on account of such purchase. 32-258

187. Notwithstanding an entry may have been erroneously allowed because of conflict with the grant to the Northern Pacific, yet if susceptible to confirmation, at the election of the entryman, under the act of July 1, 1898, as extended by the act of May 17, 1906, and he fails to exercise his election and the entry is canceled, repayment of the purchase money paid for the land is not authorized. 36-98

188. A homestead entry erroneously allowed for land within the Northern Pacific grant subsequent to the act of July 1, 1898, and actually abandoned prior to, although not canceled of record until after, the act of May 17, 1906, does not constitute a claim subject to adjustment under said acts, and the entryman is entitled to repayment of the fees and commissions paid upon said entry. 36-266

189. An entry allowed for lands within the overlap of the forfeited main line and constructed branch line of the Northern Pacific railway, *via* the valley of the Columbia River to Portland, Oreg., held by the Supreme Court to have passed to the company under its grant, was improperly allowed and could not have been confirmed, because of conflict with the grant, and where made subsequent to the act of July 1, 1898, and abandoned prior to the act of May 17, 1906, the conflicting claims of the company and the entryman are not subject to adjustment under said acts, and the entryman is entitled to repayment of the fees, commissions, and excess paid upon said entry. 36-155

III. "Canceled for Conflict."

190. An entry that on contest is canceled on account of the superior right of a

bona fide settler is "canceled for conflict" within the meaning of the repayment act of June 16, 1880. 28-21

191. A homestead entry, made for land covered by a preemption declaratory statement, and subsequently canceled on allowance of the preemption entry, is "canceled for conflict" within the meaning of the act of June 16, 1880. 30-255

192. Where one made homestead entry of land covered by a preemption declaratory statement which was subsequently carried to entry, and with a view to avoiding litigation on account of such adverse claim, and prior to any default on the part of the preemption claimant, in good faith relinquished his entry, without receiving any consideration therefor, such entry was "canceled for conflict" within the meaning of the act, and the entryman is entitled to repayment of the fee and commissions. 36-428

193. Where the local office recommends the cancellation of an entry on a contest involving priority of right, and the entryman thereupon applies for repayment, accompanying his application with a relinquishment, his entry may be treated as "canceled for conflict," if the recommendation of the local office is subsequently approved. 27-616

194. If a preemption claimant for offered land fails to assert his right of purchase within the statutory period, an intervening desert entry will defeat said right; and if the entryman thereafter voluntarily relinquishes his entry, he is not entitled to, on the ground that his entry was "canceled for conflict." 24-575

195. An entry in good faith relinquished because in conflict with a prior settlement right was "canceled for conflict" within the meaning of the act, notwithstanding there was no contest to determine the conflicting rights, and the entryman is entitled to repayment of the moneys paid in connection therewith. 39-477

IV. Assignees.

196. The right of assignees to, under section 2, act of June 16, 1880, is restricted to assignees of the land, and does not ex-

tend to persons holding an assignment of the claim for the money paid on the entry. 21-366; 24-246; 30-53

197. A transferee who applies for, must show that the land covered by the entry in question is not encumbered. 21-20

198. One claiming under an assignment of a coal land claim executed prior to entry does not occupy the position of an assignee within the meaning of the statute. 33-313

199. An applicant for repayment of the purchase money paid on a commuted homestead entry, who claims as mortgagee under a mortgage executed prior to completion of the entry, is not an assignee within the meaning of the statute and is not entitled to repayment. 34-618

200. A purchaser of the land subsequent to the cancellation of the entry acquires no right to a repayment of the purchase money paid by the entryman. 14-140; 20-75; 24-246; 27-59; 30-4

201. The transferee holding the present interest in the land to which title has failed is the party entitled to. 8-636

202. A mortgagee, whose claim is a mere lien on the land, is not an assignee and as such entitled to. 11-283; 15-392; 24-246

203. An application for, made by a mortgagee of the land, who also holds an alleged assignment of the right to repayment, does not present a case wherein the status of the applicant, as an assignee, must be determined, if the duplicate receipt is not surrendered and all claims to the land properly relinquished. 24-496

204. The assignee of a mortgage is entitled to, where an entry is erroneously allowed and prior to its cancellation the land is mortgaged and the mortgage assigned, and after cancellation the mortgage is foreclosed and a sheriff's deed secured; but the assignee in such case should relinquish all claim to the land before repayment is allowed. 28-201

205. In the case of a mortgage executed prior to cancellation of the entry covering the land, and a deed made to the mortgagee after such cancellation, for the purpose of giving additional effect to the mortgage, the holder of such conveyances may be regarded as an assignee and as such entitled to. 26-425

206. Where an entry is erroneously allowed, but before its cancellation the land is mortgaged, and the mortgagee receives a deed therefor under foreclosure proceedings initiated subsequent to such cancellation, he is an assignee within the meaning of the act, and as such entitled to repayment. 30-136

207. Repayment of the purchase money paid on a commutation cash entry will not be allowed where the applicant is claiming under a mortgage acquired by assignment executed subsequently to the cancellation of the entry. 32-563

208. The purchaser of lands at a tax sale, at a time when the legal title is in the United States, does not occupy the status of an assignee of the entryman. 23-555

209. A person holding under a deed executed prior to submission of final proof and issuance of final receipt has no standing as an assignee under the statute providing for. 25-89

210. An entryman who applies for, and alleges that he has sold the land, that the sale was made under warranty deed, and that the warranty has been made good, should furnish evidence that he has made good his warranty, and also obtain a release from his grantee of all interest under the entry involved. 17-140

211. While paragraph 13 of the instructions governing repayments, approved January 22, 1901, provides that "where there has been a conveyance of the land and the *original purchaser* applies for repayment, he must show that he has indemnified his assignee or perfected the title in him through another source, or produce a full reconveyance to himself from the last grantee or assignee," any successor of such original purchaser in a line of conveyances is equally within the reason of the rule and should be given the same standing as his grantor. 34-328

212. Of the purchase price paid on a cash entry made under the act of June 15, 1880, by one claiming the status of a transferee, must be denied, where such entry is canceled because the "instrument in writing" by which the alleged transfer was made, is not "*bona fide*" 29-686

213. One who procures an entry through false testimony is not entitled to, and a transferee under such an entry has no better right than the entryman. 8-140

214. Repayment not authorized where entry is properly allowed on the proof presented, but is subsequently canceled upon a showing that such proof is false; and in this respect an assignee has no better right than the entryman. 34-618

215. Denied to an assignee of a canceled warrant location made under fictitious name. 3-458

216. Not allowed to one who as assignee under a graduation entry made cash payments in lieu of settlement and cultivation. 8-134

V. Double Minimum Excess.

217. Circular of April 2, 1907, under act of March 2, 1907, relative to repayment of excess. 35-492

218. Not allowed for alleged double minimum excess paid for land in railroad limits where the price is enhanced prior to the claimant's settlement. 1-524

219. Where the local officers erroneously sold double minimum land at the minimum price and on demand the purchaser declined to pay the additional price, since entry was erroneously allowed and can not be confirmed, he may have repayment on compliance with circular requirements. 2-679

220. Certain lands were withdrawn for a railroad (Central Pacific), but were excepted from the grant, and prior to restoration were embraced by another grant (Southern Pacific), but were excepted from it also; the odd sections were ordered to be sold at minimum and the even sections at double minimum, and the applicant bought at the double minimum price; he can not have repayment. 2-679, 680

221. Of alleged double minimum excess on canceled cash entries made under the act of June 8, 1872, on the ground that the Secretary, in fixing the price of the land, erroneously supposed it to be within the limits of a railroad grant, can not be allowed, it not conclusively appearing that the Secretary was controlled by the reason alleged. 21-118; 23-151; 30-297

222. An entryman who transfers a commuted homestead entry, under the act of October 1, 1890, from single minimum land to land held at double minimum, is properly required to pay the additional \$1.25 per acre, and consequently is not entitled to. 21-427

223. Land within the limits of a railroad grant, and reduced in price by the act of June 15, 1880, is again raised to double minimum if subsequently falling within the limits of another grant. 2-679; 11-99; 35-599

224. There is no provision for repayment of the excess where the lands reduced by section 3, act of June 15, 1880, were subsequently sold at double minimum. 2-677; 20-216; 27-147

225. The act of June 16, 1880, does not authorize the Secretary to draw his warrant upon the Treasury for double minimum excess erroneously charged for lands reduced in price by section 3, act of June 15, 1880; but where the consideration received by the Government is in the form of surveyor general's scrip, that yet remains in custody of the department, the error may be corrected by a return of scrip equal in amount to the excess. 28-248

226. Of the excess over minimum paid for railroad lands which lie within the exterior limits of a grant (Northern Pacific), but which do not pass by it because they form part of a reservation (Bitter Root Valley), is not within the intention of the relief provided by the act of June 16, 1880. 2-675

227. Notwithstanding the act of June 5, 1872, opening the lands in the Bitter Root Valley above Lolo Fork to settlement, fixed the price at \$1.25 per acre, the even-numbered sections falling within the primary limits of the grant to the Northern Pacific were, under section 2357, R. S., properly rated at \$2.50 per acre; and an entryman required to pay the higher price is not entitled to repayment of the difference. 38-319

228. Where lands are purchased at double minimum while within the granted limits as fixed by the general route, and are afterwards left outside of said limits

by the definite location, repayment of excess may be made. 2-676

229. In case of double minimum excess paid for land subsequently found not to be within the limits of a railroad grant the excess may be repaid without waiting for approval of the entry for patent. 6-383

230. There is no authority for return of the excess, where lands may have been improperly sold as double minimum, except in cases where the lands have been afterwards found not to be within the limits of a railroad grant. 28-456

231. There is no authority for, of double minimum excess erroneously charged for lands within the limits of a railroad grant. 5-316; 27-296

232. There is no authority for return of double minimum excess in fees and commissions erroneously required on a homestead entry of lands in fact single minimum, where such money has been covered into the Treasury. 24-159

233. There is no authority for, of double minimum excess, erroneously charged for land settled upon by the entryman prior to withdrawal under a railroad grant. 19-580

234. Allowed in case double minimum price has been paid for land afterwards found not to be within the limits of a railroad grant. 5-437; 7-29

235. A preemption entryman who paid double minimum for lands supposed to be within the limits of a railroad grant, but which were subsequently held not to be within such limits, is entitled to repayment of the excess; but where payment was made partly in cash and partly by land warrant, the Secretary has no authority, in making repayment, to draw his warrant for an amount greater than the cash payment; and in such case, where the cash payment is not sufficient to make the repayment due the entryman, he may make an additional cash payment of such an amount as added to the sum originally paid in cash will aggregate the cost of the land at \$1.25 per acre, and thereupon have the land warrant returned to him unsatisfied. 34-551

236. An application for, of double minimum excess is properly allowable, if the land is found not to be within the limits

of a railroad grant though it may have been within the limits of an unrevoked withdrawal at the date of purchase.

27-452

237. Alleged double minimum excess can not be repaid under the last clause of section 2, act of June 16, 1880, unless it be shown that the land is not within the limits of a railroad grant.

13-572

238. An even-numbered section within the common granted limits of two railroad grants remains at double minimum though one of such grants may have been forfeited, and an application for, on the ground of double minimum excess, must be denied.

24-9

239. Double minimum lands within the limits of the grant to the Chicago, St. Paul, Minneapolis & Omaha Railroad Co., reduced in price by the act of June 15, 1880, were again raised to double minimum upon subsequently falling within the limits of the grant to the Northern Pacific as fixed by definite location July 6, 1882, and after that date were properly rated at \$2.50 per acre.

37-687

240. Double minimum lands within the limits of the grant to the Chicago, St. Paul, Minneapolis & Omaha Railroad Co. were reduced by the act of June 15, 1880, to \$1.25 per acre, and so remained until subsequently again raised to double minimum upon falling within the limits of the grant to the Northern Pacific Railway Co. as fixed by definite location July 6, 1882; and entrymen who during that period were erroneously charged double minimum for any of such lands are entitled to repayment of the excess.

37-692

241. On application for, of alleged double minimum excess it is held that the even-numbered sections within the primary limits of the grant for the Southern Pacific branch line, and the forfeited grant for the Atlantic & Pacific, are properly rated at double minimum, although within such conflicting limits the prior grant to the Atlantic & Pacific operated to defeat the grant to the Southern Pacific.

29-639

242. Of alleged double minimum excess not allowed where land within the limits of a railroad grant is properly sold at that price, even though the grant, includ-

ing the limits in question, is subsequently forfeited.

12-316

243. Where a tract of land was at the date of entry and purchase within the limits of the withdrawal upon the map of general route of a railroad, and properly rated as double minimum, and the portion of the grant within which the tract is situated was subsequently forfeited, and the price of lands therein reduced to \$1.25 per acre, there is no authority, under section 2 of the act of June 16, 1880, for allowing repayment of the amount paid for the land in excess of \$1.25 per acre.

35-177

244. A claim for, of double minimum excess not allowed if the land at date of entry was properly rated at double minimum, though the road opposite said land was not constructed and the grant therefor was afterwards forfeited.

25-308

245. Of alleged double minimum excess not allowed where the land was properly held at that price at the date of its sale.

19-458; 25-309

246. Congress having failed to make the necessary appropriation for carrying into effect the provisions of the act of March 2, 1907, relating to repayments, said act is inoperative; but even if an appropriation for that purpose were available, the act does not contemplate repayment of the excess over \$1.25 per acre, where the land was properly rated and sold at double minimum.

35-599

247. May be allowed of double minimum excess erroneously charged for land reduced in price by the act of March 2, 1889.

8-583

248. Not allowed on claim of excess where double minimum price was paid for lands within the Texas Pacific grant prior to the act of March 2, 1889.

8-530

249. No authority for, of excess over single minimum in case of an entry within the forfeited limits of the Texas Pacific grant made prior to March 2, 1889.

14-8

250. Not authorized of the excess over \$1.25 per acre paid on a desert entry within railroad limits though the land was held at single minimum at date of initial entry.

9-49; 12-632

251. Though not allowed for excess over single minimum when the land was prop-

erly held double minimum at date of initial desert entry, but was subsequently reduced in price by statute, credit for such excess may be given on completion of the entry. 9-429

252. There is no authority for, of double minimum excess erroneously required under a desert entry of an even section within the limits of a railroad grant. 17-339; 22-314

253. An entry of desert land within railroad limits at double minimum is not an entry "erroneously allowed" on which repayment of the first installment of the purchase price can be made, where the entry is canceled for noncompliance with law. 22-604

254. Not allowed for double minimum excess erroneously required on desert entry; credit therefor may be given on final payment. 16-170

VI. Desert-Land Entry—Compactness.

See DESERT LAND, II, b.

255. The right to repayment of the purchase money paid on a desert entry will be recognized where the entry as allowed is in form *prima facie* noncompact, and it does not appear from the record that it was as nearly in compact form "as the situation of the land and its relation to other lands will admit of," and was for that reason erroneously allowed and could not have been confirmed. 31-354

256. Of the purchase money paid on a desert entry will not be allowed, on the ground that the entry is noncompact, where upon its face the entry does not show such a departure from a reasonable requirement of compactness as would necessarily preclude its confirmation. 32-667, 668

257. Of the purchase money paid on a desert entry will not be allowed where the entry upon its face does not show such a departure from a reasonable requirement of compactness as would necessarily preclude its confirmation, and it is not shown by the record, or otherwise disclosed, that said entry was not as nearly in the form of a technical section as the situation of the land and its relation to other lands would admit of. 32-471

258. Where part of a desert entry is voluntarily relinquished by the entryman, repayment of the purchase money paid on such relinquished portion will not be allowed, on the ground that the entry was noncompact and could not have been confirmed, where the entry upon its face does not show such a departure from a reasonable requirement of compactness as would necessarily preclude its confirmation, and it is not shown by the record, or otherwise disclosed, that said entry was not as compact as the situation of the land and its relation to other lands would admit of. 32-660

259. Where the entry is of unreasonable shape on its face, and the records fail to show that it could have been made in other form, the applicant for repayment must furnish proof that the entry could have been made in different and more compact form. 33-438

260. If an entry on its face shows no gross or absolute departure from any reasonable degree or requirement of compactness, it is not a case for repayment, regardless of the facts disclosed by the records. 33-438; 35-152

261. Whether an entry is "in compact form" must be determined from the facts of each case, consideration being given to the area of the entry as well as to the regulations and departmental decisions and practice, as far as practicable. 33-438

262. A desert entry consisting of four 40-acre tracts in a row, contiguous only by the joining of the ends thereof, is not such a departure from a reasonable requirement of compactness as to render the entry impossible of confirmation, and repayment on that ground will not be allowed. 35-152

263. Repayment of the first installment of the purchase money paid on a desert entry will be allowed where the entry did not conform to the statutory requirement in the matter of compactness and was for that reason erroneously allowed and could not have been confirmed. 30-355

264. The right of, will be recognized in case of a desert entry erroneously allowed for land on both sides of a meandered stream, which was of the class which should have been meandered, and which

renders the tracts embraced within the entry noncontiguous, notwithstanding the entry was canceled for a different reason.

31-311

265. If an entry is of unreasonable shape on its face, or flagrantly violates the regulations as to intersecting streams, and the records disclose that it might have been made in better form, so far as the character and topography of adjacent lands and prior appropriation are concerned, a case for repayment is made out.

33-437

266. The right to repayment of the purchase money paid on a desert entry of unsurveyed land will be recognized where the entry as allowed is in form *prima facie* noncompact, and it is not shown that it was as nearly in compact form "as the situation of the land and its relation to other lands will admit of," and was for that reason, and the further reason that the entry embraced lands on both sides of a river, erroneously allowed and could not have been confirmed.

32-420

VII. Act of March 26, 1908.

267. Instructions of April 29, 1908, under act of March 26, 1908.

36-388

268. Circular of July 23, 1910, under act of March 26, 1908.

39-146

269. The act does not repeal or modify existing laws governing repayments, nor authorize or contemplate the reopening of cases properly adjudicated under prior laws.

37-352

270. The purpose of the act is to authorize repayment of purchase moneys and commissions paid in connection with applications to make "filing, location, selection, entry, or proof," and covered into the Treasury, in cases where, in the process of adjudication, the application, entry, or proof was rejected and no fraud or attempted fraud in connection with the application appears.

37-338

271. The act is merely supplemental to existing laws governing repayments, and does not authorize repayment where an entry properly allowed for land subject thereto fails of confirmation solely because of the fault or laches of the entryman.

37-338

272. The act is merely supplementary to existing law governing repayments, and does not contemplate the reopening of cases properly adjudicated under prior laws, nor authorize repayment in cases where the entry failed of confirmation solely because of the fault or laches of the entryman.

37-210

273. Section 2 has reference solely to moneys paid for public lands disposed of under the public-land laws and covered into the Treasury and subject to the absolute control and disposition of the United States, and affords no authority for the repayment of moneys paid on Ototo and Missouri lands disposed of under the act of March 3, 1881, and placed to the credit of the Indians.

37-714

274. A mortgagee under a mortgage which is merely a lien is not a "legal representative" within the meaning of the act of March 26, 1908, authorizing repayment to the persons who made the payment or their "legal representatives."

38-151

275. The Northern Pacific having voluntarily relinquished a selection under the act of July 1, 1898, after having paid the required fees, and subsequently embraced the same tracts in other lists under that act and again paid fees thereon, is entitled to repayment of the fees paid upon the first selection.

38-270

276. The amount paid in making purchase under section 2, act of June 15, 1880, of land embraced in a second soldiers' additional entry canceled under the ruling, since changed, that one entry exhausted a soldiers' additional right, whether for the entire right or not, does not constitute an excess payment within the meaning of section 2, act of March 26, 1908, and repayment thereof can not be allowed.

38-231

277. Where the proof submitted on a timber and stone claim is challenged by the Land Department and the claimant notified that unless he applies for a hearing his claim will be rejected, and to avoid the expense of a hearing he relinquishes the claim and applies for return of the purchase money, repayment may be allowed under section 1 of the act, in the absence of fraud or bad faith, the action of the Land Department amounting to a

rejection of the proof within the meaning of that section. 38-564

278. Mere error of judgment on the part of a timber and stone applicant in swearing that the land applied for is more valuable for timber than for agricultural purposes and is unoccupied, no bad faith or attempt at fraud appearing, is not sufficient ground for refusing repayment of the purchase money, upon rejection of the application by the department based upon a finding that the land is agricultural in character. 39-191

279. An entry canceled for failure to comply with law or upon voluntary relinquishment can not be considered as rejected within the meaning of the act, but where an entry void *ab initio* is canceled upon relinquishment filed in response to a rule to show cause why it should not be canceled, it may properly be considered as a rejected entry within the meaning of that act and repayment allowed if no fraud or attempted fraud in connection therewith is found. 39-495

280. The mere fact that an entry was voluntarily relinquished will not absolutely bar repayment under the act of March 26, 1908, in the absence of fraud or bad faith in the making of the entry, if the relinquishment was made for good and sufficient cause and under such conditions and circumstances as would entitle the person relinquishing to make a second entry as though the first had not been made. 40-106

VIII. Act of February 24, 1909.

281. In making up an account under the act the surveyor general should state the account from the best data and information obtainable; and a *bona fide* official account, prepared from such data, will be accepted by the General Land Office and the department, unless clearly shown to be erroneous. 38-469

282. The act contemplates that an account shall be stated in every case where application for repayment is made, and if it appear that there is any excess in the amount deposited over and above the actual cost of the work performed and the expenses incident thereto, it should be

stated and certified from the best data and information obtainable. 38-169

RESERVATION.

- I. Generally.
- II. Indian.
- III. Military.
- IV. Forest Land.

I. Generally.

See RAILROAD GRANT, V; RESERVOIR LANDS; SETTLEMENT, 14, 114-130.

1. Authority of President to create, and provisions of law relative thereto. 1-702

2. The President is vested with general authority in the matter of reserving land for public uses. 6-18, 317; 10-513

3. No specific statutory authority exists empowering the President to reserve public land; but the right to reserve such land for public uses is recognized and maintained by the courts. 13-426, 607, 628

4. The President, in setting apart land, is regarded as acting under authority of Congress. 1-30

5. The power of the President to create, extends to any unappropriated public land. 1-30, 553

6. Order of President declaring, will be held constitutional until otherwise judicially decided. 22-197

7. Of lands declared by Executive proclamation, subject to congressional action and subsequently ratified by Congress, is operative from the date of the proclamation. 22-196

8. An order by the Land Department withdrawing public lands is operative, unless otherwise limited, from the time it is made. 20-32; 33-677

9. Land set apart by Executive authority for public use is not subject to disposition under the public-land laws during the existence of the reservation. 6-317

10. The Commissioner of the Land Office is vested with discretionary authority, and the withdrawal made by him of land supposed to be included within a claim is legal if not disapproved by the Secretary. 3-55

11. The power to reserve land for "public purposes," authorizes a withdrawal for a courthouse site. 29-336

12. A question as to the reservation and appropriation of public land, there being power to so reserve or appropriate it, is one of fact rather than of mere form. 30-611; 31-88

13. Withdrawals of public lands may be made for present public uses, or disposition in a special way, or in anticipation of future uses or disposal. 31-193

14. An order suspending public land from disposal to prevent fraudulent entry thereof is within the authority of the Commissioner of the General Land Office. 12-326

15. For public-school purposes in Alaska, may be made by the Government in the absence of express statutory authority. 18-288

16. The mere occupancy of land in Alaska for the purpose of trade and manufacture will not confer any right upon the occupant, as against the Government, that will prevent reservation of the land for naval purposes. 25-212

17. Made by competent authority reserves the land from appropriation under the public-land laws. 6-585; 31-193

18. Lands which for a long period of time have been with the knowledge and acquiescence of the Government included in the site of a reservoir used as a feeder of a canal in the maintenance and operation of which the government is interested, are not "unappropriated public lands" and are therefore not subject to soldiers' additional entry. 30-186

19. May be effected through a proclamation or an Executive order. 13-426

20. Created by Executive order excludes the land from entry. 13-628

21. The Executive will in creating, is not to be defeated through a failure of the surveyor to properly locate the boundaries. 13-628

22. Failure of the local office, in noting an order of, to include a tract actually embraced in said order, will not defeat the reservation as to said tract, and a homestead entry, subsequently allowed therefor, must be canceled. 20-372

23. Created by Executive order is binding upon all departments of the Government and citizens of the United States. 13-628

24. Created by Executive order for a public purpose, and embracing land covered by a *prima facie* valid entry, will take effect thereon if the entry is subsequently canceled. 5-49; 10-144; 15-2; 32-395

25. For a public purpose should be distinguished from one for the benefit of a railroad grant. 5-49

26. An order of withdrawal, made for a public purpose, takes effect on the date of its issue regardless of the time it may reach the local office. 21-134; 33-677

27. Of land for special purposes made to the end that the Government may enforce them. 1-368

28. The legal appropriation of land for any purpose severs it from the public lands, and it is not thereafter subject to other disposition. 1-339, 393; 30-276

29. A departmental letter to the Commissioner of the General Land Office directing him to withdraw at some future time, when surveyed, a sufficient quantity of land to serve a special purpose is not in and of itself a withdrawal. 21-24

30. Where a telegraphic order of the General Land Office to the surveyor general of a State directs the survey of certain lands for a specific purpose, and notice thereof is not given the local office, said order should not be treated as a withdrawal as against the rights of settlers acquired without knowledge thereof. 21-24

31. Land withdrawn for the benefit of designated claimants is not subject to appropriation by others. 10-144

32. No part of lands withdrawn for the location of a reservation subject to settlement until after survey. 3-219

33. May not under order of President include land covered by an existing homestead entry. 1-30, 451

34. An Executive order creating, is inoperative as to land embraced in a preemption entry on which final certificate has issued. 17-317

35. An Executive order, reserving land for lighthouse purposes, will not take effect

upon land embraced in a donation claim under which due compliance with the law has been shown prior to the issuance of said order. 19-470

36. Land embraced in a preemption filing may be set apart at any time prior to final proof and payment. 1-30, 450, 451

37. Claims initiated prior to order of, should be protected if compatible with public interests. 1-451

38. Compensation recommended where settler's claim was appropriated to Government use. 1-307

39. Are created by law or order and not by mere markings on the official plats, whether of saline, swamp, mineral, or timbered lands; qualified claimants have the right to claim them and to show that they are not of the character indicated. 2-847

40. The failure of the plats to show the saline character of a tract does not subject it to entry; it is reserved by the law and not by markings on the plats. 2-851

41. Of section 33 in each township for public buildings, in the proclamation opening the Cherokee Outlet, applicable only to lands which had not been "otherwise reserved or disposed of," and therefore did not include the lands in the "saline reserve" that were specifically withheld from disposition by a prior declaration in said proclamation. By proclamation of July 27, 1898, the lands so reserved were restored to the public domain for disposal, subject to the policy of the Government in its disposition of saline lands. 29-533

42. The lands restored to the public domain by proclamation of July 27, 1898, should be treated as presumptively of saline character, but should it be ascertained that any of them are not saline, disposition thereof can be made under the laws relating to public lands in the Cherokee Outlet. 29-533

43. A tract of land is not reserved by an inadvertent notation of its disposition on the tract book and plat in the local office. 14-50

44. Inadvertent notation of warrant location on local office records does not constitute a reservation of the land. 5-202

45. No mere *de facto* reservation or appropriation can defeat the rights of qualified claimants to the public land. 2-849

46. Effected by an entry is not defeated by failure of the district officers to properly note the same of record. 14-242

47. Effected by an application to locate a warrant upon a specific tract not defeated by loss of the warrant and fees in the General Land Office, though as the result of such loss no record of the location is made in the local office. 14-278

48. An order of the General Land Office directing the location of a military bounty land warrant upon a specific tract operates to reserve such tract from other disposition, even though such order is not entered of record in the local office. 16-296

49. In restoring to the public domain lands temporarily withdrawn, the Land Department, although declaring them subject to settlement from and after the date of restoration, may postpone opening them to entry, filing, selection, or other appropriation under the public-land laws, until after the publication of notice declaring them subject to such disposition. 33-236

50. An order of the Secretary directing the reservation of a tract of land for school purposes, while subsisting, effectually precludes the allowance of a homestead entry of the land so reserved. 29-563

51. Pendency of a departmental order excluding land from disposition until the final adjudication of a pending claim therefor, removes the land from the jurisdiction of the local office. 21-71

52. Created by Executive order exists until formal order of revocation, though the purpose of the withdrawal may have ceased to exist. 5-432

53. Lands constituting Government reservations are not subject to preemption or homestead claims, and upon relinquishment are regarded as a distinct class of public lands; it has been customary, when Congress intended to open them to entry, to express such intention plainly; otherwise they are subject only to appraisal and sale. 2-604

54. The theory of the appraisal before sale of these lands is that time enhances their value by the increase of population around them. 2-610

55. When brought into market the Commissioner of the General Land Office shall fix the price. 5-270

56. The order of March 10, 1863, did not restore to the public domain any of the lands previously reserved at Port Angeles for townsite and other purposes. 12-284

57. Of 1 acre at Guthrie, Okla., for Government use is not defeated though not located in exact accordance with the proclamation of the President. 13-249

58. Consent of the department given for the erection of a post-office building on the "Government acre" at Kingfisher, Okla., by the citizens of said place. 21-69

59. The department will not consent to the erection of buildings on land reserved for Government use, when such improvements may form the basis of a demand against the United States. 20-465

60. Under consideration in section 2364, R. S., does not include even-numbered sections increased in price on account of a railroad grant. 5-270

61. Of alternate sections from a grant to a State for railroad or canal purposes; effect of. 10-396

62. Unlawful settlement on abandoned reservations (military) is trespass. 2-822

63. Claim of occupant in Hot Springs must be presented under the act of March 3, 1877. 3-464

64. Of certain lands in Alaska recommended. 13-426

65. In the absence of express statutory authority the Architect of the Capitol has no right to permit the erection of a terminal railway station on the Capitol Grounds. 25-254

II. Indian.

See INDIAN LANDS; RAILROAD GRANT, X; RIGHT OF WAY.

66. Is effected by order of the President withdrawing land for the use of Indians. 5-432

67. Withdrawal for the purposes of a contemplated Indian reservation is within the scope of Executive authority, and effectually excludes the land from other appropriation. 17-420

68. Permanent Indian, defined, as well as "common Indian title," and the distinction noted. 1-101; 5-138, 343; 16-229

69. It is not necessary that a treaty or act of Congress shall specifically describe the lands that are reserved. It is sufficient if the lands occupied by the Indians are recognized by the officials of the Government as reserved Indian lands. 22-383

70. Of specific lands for the residence of an Indian tribe, provided for in a treaty in which it is declared that the terms shall be binding upon the parties when ratified by the Senate and the President, is operative from the date of signing the treaty, and not from the date of its ratification. 22-170

71. An entry of record excepts the lands from an Executive order reserving land for the benefit of Indian claimants under the homestead law; but such order becomes effective on cancellation of the entry. 5-49; 10-144; 15-2

72. Executive order for the establishment of Indian, does not take effect upon land covered by a homestead entry. 14-589

73. The use and occupancy of unsurveyed public land for the purposes of a trading post will not except such land from a subsequent Executive order creating an Indian reservation. 12-205

74. Of land by Executive order for the use of Indians excludes the acquisition of settlement rights thereto. 12-437

75. A departmental order withdrawing lands from entry by white men precludes such disposal of said lands while in effect. 15-541

76. A general order opening an Indian reservation does not confer upon claimants under the settlement laws any right to settle upon or enter lands that are excluded from such appropriation by reason of Indian occupancy. 16-15

77. An Executive order creating a, for Indian purposes and excluding therefrom the major part of a settlement claim asserted on lands subject to Indian occupancy does not operate to confer settlement rights that could not otherwise be obtained. 13-269

78. Klamath River, Cal., has been maintained since passage of act of April 3,

1864: when selections for the Indians within it are made the question of restoring the remaining lands to the public domain will be considered. 2-460

79. Lands in the Klamath Indian, were not restored to the public domain by the act of April 8, 1864, but reserved for disposition in accordance with the special provisions of said act. 13-733

80. Klamath River Reservation was not abolished by or under the act of April 8, 1864, but was recognized by the act of June 17, 1892, as an existing reservation, and the Indians thereon were by said act recognized as constituting a tribe. 33-205

81. Allotments to Indians on the Klamath River Reservation, under the act of June 17, 1892, were made to the Indians as a tribe, under section 1 of the general allotment act of February 8, 1887, and not under section 4 of said act. 33-205

82. Under the act of February 8, 1887, reservation Indians are not required to settle, improve, or maintain residence upon their allotments made from lands held for the tribe. 33-205

83. Tracts included within the Executive withdrawal of lands for the protection of the Yakima Indians in their fishing privileges not necessary thereto, should be released. 18-38, 604

84. Fort Berthold, Mont. and Dak., made by Executive order May 12, 1870; the greater part fell into a prior withdrawal for the Northern Pacific Railroad by Executive order of July 13, 1883, restoring it to the public domain; no rights by settlement were acquired in it. 2-520

85. The authority of the Secretary to withdraw lands for the use of Indians may be exercised within the limits of the withdrawal on the general route of the Northern Pacific. 20-332; 26-422

86. Crow Indian, Mont. The Indian title was confirmed, not acquired, by the treaty of 1868; the Northern Pacific Railroad may not take materials for construction from it because it was not public land at date of grant. 2-520

87. For Indian purposes created by treaty of April 18, 1855, was of lands in "the Bitter Root Valley above the Lolo Fork." 19-532

88. Bitter Root Valley, Mont., above the Lolo Fork, did not pass to the Northern Pacific Railroad, under act of June 15, 1872, but 15 townships were to be sold at minimum price; the price of the remainder should be fixed at double minimum. 2-675

89. The provision in the agreement of July 7, 1883, for the protection of "all other Indians living on Columbia Reservation" extends to Indians then living on said reservation and not represented in said agreement. 16-15

90. Ute (Uncompahgre and White River), Colo., opened by act of July 28, 1882, with saving of rights of settlers in the 10-mile strip west of the one hundred and seventh meridian, which had been mistakenly surveyed and settled on; the act legalized the illegal occupation, nothing more; it did not save any rights or affect the price of the lands. 2-730

91. Lands containing gilsonite, asphaltum, elaterite, and like substances, situated in the Uncompahgre Ute, have been, since the date of the Executive order creating said reservation, and still are, excepted from the operation of the mining laws. 29-456

92. By virtue of the act of July 1, 1898, mineral lands in the diminished Colville Reservation are subject to location and entry under the mining laws. 38-409

93. A mere paper location, not based upon a valid discovery of mineral, does not withdraw the land from allotment, and allotments thereof may be made, due care being exercised not to make allotments of lands which are in fact mineral. 38-409

94. The provision in section 4, act of June 3, 1878, that nothing contained in said act shall prevent "the taking of timber for the use of the United States," furnishes no authority to permit the cutting of timber from the public lands for construction work in connection with the Fort Hall Indian Reservation irrigation project, provided for by the act of March 1, 1907. 36-539

95. Fond du Lac, Minn., Indians may not cut timber except to improve the land, and only after approval of their selections. 2-821

96. The direction of the Secretary that a boundary line of an Indian, as thereto-

fore surveyed, should be retraced and marked on the ground, is a final adjudication as to the correctness of said line that should not be disturbed by his successor in office. 22-301

97. The change of the boundaries of the Fond du Lac Indian, by Executive order, to correct an error of description, did not affect the validity of said reservation as finally established, although originally created under an act that described the boundaries thereof. 19-320

98. The Secretary is without authority to grant an application for a permit to change the channel of a river, the boundary of lands reserved by Executive order, where such action is not required for the care and disposal of the public lands or for the protection of the Indians. 21-144

99. The approved boundary line of an Indian, will not, after a lapse of years, be changed, where such action will operate to disturb vested rights acquired in good faith under the previous action of the department. Where a boundary line that has been long accepted by the parties in interest is attacked and a different line alleged to be the true one, and there is room for doubt as to which is the true line, the doubt should be resolved in favor of the established line. 22-301

100. Right of way only granted as an easement to railroad company through Red Cliff Reservation. 3-591

101. Report of special agents on adjustment of settlers' claims on Sioux Reservation. 3-288

102. Lands in former Sioux Reservation released from suspension. 3-598

103. Lands within the Crow Indian, released under treaty made before but not ratified until after definite location of the railroad were excepted from the grant. 3-158

104. Lands within the Crow Indian, and subsequently included within the Yellowstone National Park were appropriated for the purposes of said park as of the date of said act, subject only to the right of the Indians, and when said right was extinguished the lands became part of the park. 17-261

105. Sixteenth article of treaty of April 29, 1868, did not reserve the land described therein as "north of the North

Platte River and east of the Big Horn Mountains." 5-343

106. Agricultural lands formerly within the Sioux Indian, and opened to settlement under the act of March 2, 1889, subject to disposition only under the homestead law. 11-231

107. The act of March 2, 1889, gave to persons who had in good faith settled on the Crow Creek and Winnebago Reservation between the dates specified a preference right to reenter upon their claims. 13-657

108. Santee Sioux, not opened to entry prior to receipt of Indian allotments. 5-311

109. Allotments under the act of March 3, 1863, were protected in the Executive order opening the Santee Sioux Reservation to settlement and entry. 5-447

110. For the use of the Navajo Indians by order of April 24, 1886, excludes preemption. 7-334

111. Compensation provided for settlers on Navajo. 7-334

112. No statutory authority for certain right of way privileges claimed through the Puyallup Reservation. 7-450

113. The construction of the treaty of December 26, 1854, adopted by the Executive, with the assent of the Indians, in the matter of the Puyallup additional reservation, having been recognized by congressional action, should be accepted as conclusive. 10-513

114. The Puyallup additional, created by Executive order of January 20, 1857, was within the scope of the authority conferred upon the President by the sixth article of the treaty. 10-513

115. The authority of the Executive in making the treaty of December 26, 1854, carried with it the right to reserve the lands therein set apart for the use of the Indians and empowered the President to make such additional reservations as might be necessary. 10-513

116. For the use of Indians not limited by the act of September 27, 1850, and amendatory acts relative to public lands in Oregon. 10-513

117. Under treaty and constitutional authority the President is duly authorized to direct a, for the protection of the Zuni Indians in their occupancy. 13-628

118. Entry erroneously allowed for land covered by Indian, may be held intact on the release of the land. 11-231

119. Under an order directing the, of a tract of land for the benefit of an Indian, with a view to his subsequent entry thereof, there is no right conferred upon the Indian by which his relinquishment will serve to release the land from. 25-95

120. The authority to remove property, wrongfully brought upon an Indian, or the presence of which is detrimental to the peace and welfare of the Indians, necessarily follows from the authority to remove persons under like circumstances, and from the general power of management of Indian affairs committed to the Commissioner of Indian Affairs, acting under direction of the Secretary. 29-1

121. Whether a person is in an Indian country "without authority" of law, or whether his "presence within the limits of the reservation" is "detrimental to the peace and welfare of the Indians," must be determined by the Commissioner of Indian Affairs, acting under the direction of the Secretary; but if so found, the offender may be summarily removed from any tribal reservation. 29-1

122. A telephone company that, without statutory authority, enters upon and constructs a telephone line across an Indian, may be dealt with as a trespasser. 29-1

123. The fact that certain logs on the Menominee Reservation may be rapidly decreasing in value because of decay and that their further deterioration and consequent financial loss to the Indians can be prevented only by overtime labor in immediately manufacturing them into lumber does not constitute an "extraordinary emergency" within the meaning of the act of August 1, 1892, forbidding more than 8 hours work per day by laborers employed by the Government except in cases of extraordinary emergency. 37-32

124. Regulations of June 8, 1906, under act of April 21, 1904, relative to selections in lieu of lands in Indian Reservations. 34-666

125. Regulations of March 3, 1909, under act of April 21, 1904, governing exchanges of lands in Indian reservations for public lands. 37-537

126. Instructions of March 6, 1912, respecting applications for exchange of lands in Indian reservations for public lands, under act of April 21, 1904. 40-491

127. In case lands within the odd-numbered sections granted in aid of the construction of a railroad fall within an Indian reservation and it is sought to exchange such lands for other public lands in accordance with the act of April 21, 1904, it is not necessary that the lands offered in exchange shall have been surveyed, where the amount of the lands embraced in the reservation and so lost to the grant may by protraction of the public survey lines be definitely ascertained. 35-83

III. Military.

128. Instructions of June 17, 1895, under act of February 15, 1895. 20-568, 569

129. Circular under the act of August 23, 1894. 19-392

130. Of land for military purposes excludes it from the operation of public-land laws. 6-19

131. A reservation of public lands by the military authorities operates as a segregation thereof. 38-496

132. The establishment and occupancy of a cantonment by military authority excludes from entry, prior to the formal order of reservation, the land thus appropriated. 5-376; 19-18

133. A settlement of lands in Florida in violation of the act of March 3, 1807, prohibiting such appropriation of said lands, confers no right; and where the lands embraced in such settlement are appropriated by military authority, and the settler ejected prior to the enactment of April 22, 1826, the provisions of said act are not applicable. 19-48

134. Of land for military purposes, directed by the War Department, precludes the allowance of an entry therefor while occupied under such authority. 9-600

135. For military purposes made by Executive order excludes the land from homestead entry. 13-607

136. The occupation and improvement of land with a view to preemption does not except it from a subsequent, for military purposes. (See 19-48.) 15-487

137. It is within the scope of Executive authority to reduce the area of a military, created by Executive order, so as to exclude lands on which improvements had been made prior to the establishment of said reservation. ~ 23-185

138. An Executive order creating a military, is not effective as to land embraced within a donation claim on which final certificate has issued. 21-273

139. Made by order of commanding general, subsequently approved by the President, takes effect by relation as of the date of said order. 6-657

140. Created by an order of the President approving a report recommending the establishment of a. (Camp Verde.) 17-557

141. Council Grove military timber reserve, established prior to the opening of the Creek lands, though falling within the limits of the lands opened by the President's proclamation, was noted on the maps of official and public survey as excepted from settlement, and therefore reserved by competent authority. 22-147

142. The President, in the exercise of his general authority, may, under the joint resolution of July 7, 1898, reserve for military purposes public lands in the Hawaiian Islands. 29-32

143. For military purposes made in violation of law does not take the land out of the class of public lands so as to require their disposal by special enactment. (See 27-505.) 6-16

144. The statutory limitation of February 14, 1853, as to the amount of land that may be withdrawn for a military, only applicable within the territorial limits of Oregon. 6-46; 9-67, 104

145. The provision in section 13, act of March 3, 1863, creating the Territory of Idaho, that "all laws of the United States which are not locally inapplicable shall have the same force and effect within said Territory of Idaho as elsewhere in the United States," was intended to give effect only to *general* laws, and did not carry into effect the *special* limitation in the act of February 14, 1853, by which the authority of the Executive to establish reservations was restricted to not exceeding 640 acres at any one place. 27-505

146. The provision in section 13, act of May 26, 1864, creating the Territory of Montana, that "all laws of the United States which are not locally inapplicable shall have the same force and effect within said Territory of Montana as elsewhere in the United States," was intended to give effect only to *general* laws, and did not carry into effect the *special* limitation in the act of February 14, 1853, by which the authority of the Executive to establish reservations was restricted to not exceeding 640 acres at any one place. 32-300

147. Created for penitentiary purposes would not, in the absence of express words indicating such intent, be held to have been abrogated by an act relieving the land from a prior military reservation. 7-133

148. An order setting apart lands for penitentiary purposes would not operate to relieve said lands from a prior military reservation; but such second appropriation made under the concurrent authority of two departments and for a purpose not inconsistent with the first would be conclusive as against any other appropriation of the land. 7-133

149. Action of the War Department in fixing boundary line of military, conclusive, being the final act of the Executive. 1-168

150. The approval of a military, by the Secretary of War, as theretofore defined by the military authorities, is the legal equivalent of the President's order to the same effect. 29-261

151. Florida; historical sketch of military reservations in. 2-607

152. Act of 1856 and section 6, act of June 12, 1858, relative to military reservations in Florida, repealed by the act of 1884. 5-632

153. An abandoned military, in the State of Florida, placed under the control of the Secretary of the Interior prior to the act of July 5, 1884, should be disposed of under the act of August 18, 1856, unaffected by the act of August 23, 1894. 19-477

154. The disposition of a military, in Florida, restored to the public domain prior to the passage of the act of July 5,

1884, is governed by the act of August 18, 1856, and under said act the commissioner may dispose of such lands at public sale or under the homestead and preemption laws. 19-48

155. The act of July 5, 1884, providing for the disposition of abandoned military, is not applicable to a, restored to the public domain prior to the passage thereof, and as section 4 repeals the act of August 18, 1856, with respect to such reservations in the State of Florida, it follows that in case of a, in said State, restored to the public domain prior to the act of 1884, and to which no rights had arisen under the repealed statute, there was no authority for the disposal thereof until the enactment of August 23, 1894, and that act, and the amendatory act of February 15, 1895, must now govern the disposition of said lands. 23-237

156. Created by Executive order issued prior to the treaty of September 30, 1854, must be taken as excluding the land covered thereby from the operation of the treaty by the consent of both parties and excepting such lands from the right of purchase accorded by said treaty. 13-679

157. In the disposal of lands in abandoned military, under the act of August 23, 1894, the time fixed for installment payments authorized by said act, and the interest thereon, should be uniform for all lands opened to settlement under said act. 20-303

158. Lands within an abandoned military, opened to disposal under the act of August 23, 1894, are subject to town-site entry under section 2387, R. S., the lands when so entered to be paid for at the appraised value. 29-501

159. The preference right to make entry of land within an abandoned military, accorded actual settlers by the acts of August 23, 1894, and February 15, 1895, must be asserted within the statutory period; and if the settler's application is rejected on account of an adverse claim he must appeal from such action, or institute contest against such claim within said period. 27-144

160. In determining whether a preferred right to enter lands within an abandoned military, is asserted within the period fixed by the act of August 23, 1894, time

should not be held to run while said lands are withheld from entry under direction of the General Land Office. 28-2

161. The preference right accorded by the act of August 23, 1894, opening lands in abandoned military reservations to settlement and entry, to settlers "who are qualified to enter under the homestead law," extends only to persons who are qualified at the date of the presentation of their applications. 32-226

162. The words "and are now residing upon any agricultural lands in said reservations" in the act of August 23, 1894, apply only to persons who are then actually residing upon said lands to the exclusion of a home elsewhere. 28-2

163. Lands in abandoned military, coming within the purview of the act of August 23, 1894, were by said act opened to homestead entry as well as to settlement. 30-90

164. The act of July 5, 1884, is limited to reservations that were in existence at that date or that should be thereafter created. 19-48, 76

165. For military purposes can not be restored to the mass of the public domain by act of the President. 14-210

166. On relinquishment of military, the land must be disposed of by Congress. 6-19

167. Abandoned military, can not be restored to entry and settlement by the President under the act of July 5, 1884. 14-233

168. The act of July 5, 1884, does not contemplate restoration to the public domain for general disposition under the public-land laws, but provides that such lands shall be disposed of in a special manner. 27-82

169. The act of July 5, 1884, is general, applying to all abandoned military reservations not encumbered by special trusts. 3-297

170. The disposition of all abandoned military, not theretofore disposed of governed by the act of July 5, 1884. 5-632

171. The acts of July 5, 1884, and August 23, 1894, provide a mode for the disposal of lands in abandoned military, exclusive of all others, and lands thus set apart for disposition are not subject to selection as "unappropriated" public

lands under the grant of July 16, 1894, to the State of Utah. 30-301

172. Congress having by the act of July 5, 1884, provided for the disposal of lands in abandoned military, the Secretary of the Interior is without authority to dispose of such lands in any other manner, or to segregate them for use as a reservoir site in connection with an irrigation project under the act of June 17, 1902. 33-130

173. Congress having by the act of July 5, 1884, provided for the disposal of lands in abandoned military, the Secretary of the Interior is without authority to dispose of such lands in any other manner, but he may suspend the disposal of the lands under said act with a view to submitting to Congress the question as to whether the lands should be reserved for public uses. 34-312

174. There is nothing in the act of July 5, 1884, providing for the disposition of lands in abandoned military, to prevent the reservation of any such lands for a national forest under section 24, act of March 3, 1891. 36-342

175. Congress having by the acts of July 5, 1884, and August 23, 1894, provided a special and exclusive mode for the disposal of lands in abandoned military, such lands are not subject to selection by the Northern Pacific Railway Co. under the act of July 1, 1898. 37-667

176. Settlement prior to January 1, 1884, protected within abandoned military, by the act of July 5, 1884. 5-632;

6-16; 18-605

177. Act of July 5, 1884, does not legalize settlements made with the full knowledge that the lands were reserved. 10-489

178. The right to make entry within an abandoned military, accorded by the act of July 5, 1884, can not be exercised in the absence of residence established prior to said act and maintained to the date of application. 19-205

179. Residence on a tract within a military, that is subsequently abandoned, acquired by one while employed as custodian of said reservation, does not confer a right of entry under the proviso to section 2, act of July 5, 1884. 22-3

180. The provisions of the act of July 5, 1884, do not protect a desert entry made while the land was reserved. 14-233

181. Entry within abandoned military, not authorized by the act of July 5, 1884, except on settlement prior to January 1, 1884, and continuous occupation thereafter. 5-555, 632

182. Settlement and entry not authorized on lands within abandoned military, after being placed under the control of the Secretary of the Interior. 9-104

183. Actual occupation prior to the establishment of, or settlement prior to January 1, 1884, with continuous occupation thereafter, must be shown to secure the right of homestead entry under the act of July 5, 1884. 7-369

184. The right to enter lands in abandoned military, restricted by the act of July 5, 1884, to those who have made in the manner prescribed an actual settlement thereon. 12-288

185. An applicant for lands within an abandoned military, can not found any right on the claims of others that were existing when the reservation was created and that have since been extinguished. 12-288

186. The occupation of land by permission of the military authorities does not constitute a settlement that is within the protection accorded *bona fide* settlers by the act of July 5, 1884. (See 19-48.) 15-487

187. No right of entry can be exercised under the act of July 5, 1884, where the lands are not subject to entry under the public-land laws at the time of their withdrawal. (See 19-48.) 15-487

188. Lands within an abandoned military, transferred to the Interior Department and appraised in accordance with a special act, but undisposed of at the date of the act of July 5, 1884, may be again appraised under said act and offered at public sale. 14-76

189. Lands within an abandoned military, that have been appraised the second time, and offered without a resulting sale, are not subject to private sale, until after a second offering. 27-493

190. The improvements on an abandoned military, may be sold separately under section 3, act of July 5, 1884, where the lands on which they stand are not subject to disposition under said act.

14-298

191. A preferred right to purchase the land on which improvements are situated is conferred by the act of July 5, 1884, upon the purchasers of such improvements prior to the passage of said act. (See 14-622.)

14-527

192. Pending the sale of Government buildings on an abandoned military, the department may withhold from disposition the land on which such buildings are situated.

10-602

193. Section 5, act of July 5, 1884, may be properly construed in connection with the act of August 4, 1892, to warrant the allowance of a placer application for land containing building stone, in accordance with the latter act.

23-516

194. Disposition of abandoned military, not affected by the act of March 2, 1889. (See sec. 8 of said act.)

8-318

195. Method of procedure in appraisalment under act of July 5, 1884.

5-228

196. The appraisal of the improvements is a prerequisite to the sale of the land and improvements together.

21-431

197. Final proof can not be submitted on a homestead entry made under the act of August 23, 1894, of lands within an abandoned military, prior to appraisal.

24-335

198. Lands within an abandoned military, subject to disposition under the act of August 23, 1894, belonging to the single minimum class, must be sold at \$1.25 per acre, though appraised at a less figure.

23-14

199. An abandoned military, embracing both surveyed and unsurveyed land may be appraised so far as surveyed and advertised for sale.

16-374

200. Sale of military, under the act of June 19, 1874.

5-103

201. For military purposes acquired by purchase should be disposed of under the act of 1884 if abandoned.

3-577

202. There is nothing in the act of July 5, 1884, authorizing the disposition of the timber growing upon any reservation, separate and apart from the lands.

33-413

203. Fort Abercrombie, Minn., opened by the act of July 15, 1882; held that one who had cultivated and improved part of a 40-acre tract since 1871, though never actually residing on it, was entitled as against one who had begun settlement and residence in 1881 with notice of the prior occupation.

2-206

204. Instructions of March 19, 1896, in the matter of Fort Abraham Lincoln.

22-456

205. Circular of June 9, 1904, under act of April 23, 1904, relative to lands in Fort Abraham Lincoln.

33-27

206. The lands formerly embraced in Fort Assiniboine and subsequently excluded therefrom, and also included within the Indian lands ceded May 1, 1888, are not disposable under the third section of said act, but under the act of July 5, 1884, as part of an abandoned military.

20-416

207. The fact that the act of April 18, 1896, provides that lands in the abandoned portion of Fort Assiniboine shall be disposed of only under the laws therein, specifically named, does not prevent a withdrawal, under the act of June 17, 1902, of any of said lands as to which no vested right has attached.

34-653

208. Instructions of February 18 and April 9, 1895, for the disposal of Fort Bridger lands.

20-118, 304

209. Instructions of January 29, 1912, relative to purchase of grazing lands in Forts Bridger, Sanders, and Laramie.

40-392

210. Fort Brooke, Fla., duly relinquished to the Secretary of the Interior on January 4, 1883, and plat of same sent by the commissioner to the local office; said plat, without accompanying instructions, did not open the land to settlers; under the law, the tract, reduced to 148.11 acres, must be ordered into market for appraisal and sale and was not subject to settlement claims.

2-603, 606

211. Instructions of May 19, 1900, relative to disposal of lands in Fort Buford.

30-394

212. Lands formerly within Fort Buford were by the act of May 19, 1900, restored to the public domain and made subject to existing laws relating to disposal of the public lands, except such laws as

are not specifically named therein, and are subject to withdrawal under the reclamation act as other portions of the public domain subject to entry under the general land laws; and a withdrawal of such lands for reclamation purposes is effective as to all of the lands for which entry was not made within three months from the filing of the township plat, and prior to the withdrawal. 34-347

213. One who, on January 1, 1900, was an actual occupant of lands within Fort Buford and otherwise qualified, is, under the act of May 19, 1900, entitled to a preference right of entry; and where he asserts such right within due time, by filing an application covering the lands occupied by him, a temporary withdrawal of such lands under the reclamation act will not defeat his right to make entry thereof, where his application was pending for adjudication before the Land Department at the date of the order of withdrawal. (See 35-649.) 35-119

214. Where, on January 1, 1900, there was no claim to a tract of land within Fort Buford by virtue of actual occupancy, an application to make homestead entry thereof, filed within due time after the filing of the township plat of survey, and which was pending before the Land Department for adjudication at the date of a temporary withdrawal of the land under the reclamation act, is effective to prevent the attachment of the withdrawal as to such tract, and the applicant may be allowed to make entry thereof. (See 35-649.) 35-119

215. Instructions of December 7, 1909, governing disposal of lands in Fort Butler. 38-331

216. Fort Cameron; instructions of March 22, 1897. 24-269

217. Fort Cameron, though abandoned, not restored to public domain; timber cutting on it is within the jurisdiction of the Land Department; settlement on it is trespass. 2-822

218. Instructions of July 19, 1910, governing sale of Camp Bowie lands. 39-124

219. Instructions of April 4, 1911, governing sale of lands in Camp Bowie. 40-1

220. Instructions of November 1, 1906, relative to disposition of lands in Camp Independence. 35-295

221. Created at Fort Cœur d'Alene by the order of August 25, 1879, was not continued in force by the failure of the General Land Office to officially notify the local office of the Executive order of April 22, 1880, modifying the boundaries thereof. 12-463

222. A settler on lands within Fort Crawford, subsequent to October 14, and prior to December 22, 1890, is not a trespasser, and will be protected as against a subsequent settler. 18-533

223. Instructions approved December 24, 1896, with respect to Fort Crittenden. 23-567

224. Instructions of August 2, 1906, relative to sale of lands in Fort Crittenden. 35-85

225. Recommended for Fort Custer and national cemetery. 5-226

226. Instructions of July 31, 1910, governing sale of Fort Davis lands. 39-138

227. Circular of June 8, 1904, relative to sale of lands in Fort Elliott. 33-26

228. Instructions of August 3, 1906, relative to reoffering of lands in Fort Elliott. 35-86

229. The act of February 13, 1891, directing the disposition of Fort Ellis, protects only such settlement rights as were recognized by the act of July 5, 1884. 12-288

230. The act of February 13, 1891, providing for the disposal of Fort Ellis, protects the rights of settlers who, prior to the establishment thereof, had settled thereon in good faith and were ejected by the military and returned on the abandonment of the reservation. 16-438

231. The provision in section 2, act of February 13, 1891, for the reservation of the lands granted by said section in the event of nonuse, is a condition subsequent, and can be taken advantage of only by the grantor. 30-543

232. Instructions of May 8, 1901, relative to purchase of pasture and grazing land in Fort Fetterman. 30-601

233. Regulations of February 10, 1912, governing purchase of pasture and grazing lands in Fort Fetterman. 40-425

234. Circular of May 4, 1908, governing disposal of Gig Harbor lands. 36-391

235. Instructions of March 15, 1907, relative to sale of land in Grass Island.

35-464

236. A homestead application for surveyed lands in Fort Hays, opened by the act of August 23, 1894, presented by a qualified applicant and rejected, at a time when said lands were legally subject to entry, and pending on appeal, serves to except the lands covered thereby from the subsequent grant to the State by the act of March 28, 1900. (See 31-114.)

30-90

237. Land in the Fort Hays, excepted from the grant to the State made by the act of March 28, 1900, because included in a pending homestead application, under which entry was subsequently made, upon the filing of a relinquishment by the entryman becomes public land, subject to disposition, and, prior to acceptance of the grant by the State, entries therefor may be properly allowed. (See 31-114.)

30-468

238. The departmental order of June 13, 1899, did not contemplate the restoration of the lands in Fort Hays to entry, but only to settlement; hence no legal claim attached by the tender of an application to enter said lands while such order remained in force or by an appeal from its rejection.

31-114

239. Instructions of June 29, 1908, relating to disposal of lands in Horn, Round, and Petit Bois Islands.

36-549

240. Purchasers of lands within the former reservation of Fort Larned are required to show compliance with the pre-emption law in matters of settlement and residence.

6-600

241. Right to acquire lands within former limits of Fort Lyon under the homestead, preemption, or timber-culture law, confined to those who had made entries or filings prior to the act of July 5, 1884.

9-67

242. Land within the former limits of Fort Lyon not entered or settled upon prior to the act of July 5, 1884, must be disposed of under said act.

9-67

243. The act of July 5, 1884, restricted the right of entry within old Fort Lyon to those who had made filing or entry prior thereto and subjected the other lands therein to public sale; and the status

of said lands remained unchanged until the act of October 1, 1890, which directed their disposition under the homestead law.

13-533

244. Instructions approved September 22, 1897, as to Fort Maginnis.

25-260

245. Instructions of November 28, 1910, governing sale of Fort McKinney lands.

39-368

246. Instructions of August 3, 1900, relative to disposal of original portion of Fort McPherson.

30-213

247. Instructions of June 12, 1908, under section 8, act of May 29, 1908, with respect to lands in Fort McPherson.

36-506

248. Boundaries of Fort Meade, modified.

3-574

249. Instructions of December 8, 1911, governing sale of lands in Mount Whitney Reservation.

40-315

250. Instructions of August 18, 1897, with respect to Fort Randall.

25-141

251. Instructions of February 21, 1898, opening Fort Randall.

26-237

252. Lands within that part of Fort Randall Reservation in Nebraska, not selected by the State or otherwise disposed of under the act of March 3, 1893, providing for the disposition of the public lands in that reservation, are subject to entry under the Kinkaid act.

35-208

253. A settlement on an odd-numbered section within Fort Randall after the passage of the act of March 3, 1893, and an application to enter the tract, thus settled upon, filed prior to the expiration of the period accorded to the State, by said act, within which to exercise a preferred right of school indemnity selection, can not defeat the assertion of such right on the part of the State.

28-569; 30-286

254. Lands formerly included within Fort Reynolds not subject to homestead, but must be sold at public sale. (See 30-310.)

15-151

255. The act of June 19, 1874, providing the method in which the lands formerly within Fort Reynolds should be disposed of did not amount to a sale or disposition of said lands, and hence did not bring them within the exception of lands "sold or otherwise disposed of," contained in the grant of school lands in the State of Colorado.

30-310

256. Instructions of July 26, 1906, relative to homestead entries in Fort Rice. 35-60

257. Instructions of September 14, 1909, governing disposal of lands in Rush Lake Valley Reservation. 38-196

258. The act of February 24, 1871, restoring the lands in Fort Sabine for sale according to existing laws, did not contemplate any disposal of said lands inconsistent with the title previously granted to the State. 21-357

259. Fort St. John, La., was not reserved by Congress or the Executive, but, being so held by former Governments, did not result to the public domain on acquisition of the country by the United States, but to special Government use; it was sold August 31, 1871. 2-397

260. Disposition of lands formerly within Fort Sanders. 7-403, 430, 548

261. The act of June 9, 1874, reducing the area of Fort Sanders, legalized settlements made while the land was not subject thereto, but did not confer a new grant upon the Union Pacific or confirm to it lands theretofore excluded from its grant. 7-430

262. An actual occupant of land within Fort Sanders, on January 1, 1890, has a preferred right under the act of July 10, 1890, to enter a quarter section including his improvements. 15-93

263. The preference right to make one entry of land formerly embraced in Fort Sanders, accorded by the proviso to the act of July 10, 1890, is limited to "actual occupants thereon" January 1, 1890, and the right to make a desert entry under said proviso can not be exercised by one who was not residing on the land at said date. 22-287

264. The preferred right accorded to "actual occupants" of the lands formerly embraced in Fort Sanders, is limited to one entry by persons who have established residence on the land involved, and that such right can not be exercised by a married woman whose husband perfects a claim for another tract under the same statute. 22-97

265. The act of July 10, 1890, providing for disposal of certain abandoned reservations in Wyoming, repeals the provisions in the act of July 5, 1884, which confer

upon the purchaser of improvements a preferred right to purchase the land. 14-622

266. Fort Seward, abolished by act of June 10, 1880, and lands opened for sale and entry. 6-657

267. Instructions of June 12, 1908, under section 8, act of May 29, 1908, with respect to lands in Fort Sheridan. 36-506

268. The purpose of the second proviso to the act of May 28, 1896, was to validate and protect homestead and preemption claims upon lands in Fort Sully initiated by settlement prior to its passage, and to this extent said act supersedes the general act of July 5, 1884, as to the disposition of lands in said reservation. 30-140

269. Instructions of January 27, 1908, relative to disposal of Fort Sumner lands. 36-242

270. Lands in Fort Wallace, which by the act of October 19, 1888, were opened to disposition under the homestead law, are not unappropriated public lands within the meaning of the act of June 22, 1874, providing for the relief of settlers on railroad lands, and are not subject to selection in lieu of lands relinquished under said act. 33-487

271. On abandonment of the White River Military, the land became subject to disposal under the act of June 15, 1880, and not under the law providing for the sale of abandoned military reservations. 7-191

IV. Forest Land.

See RIGHT OF WAY; WORDS AND PHRASES CONSTRUED, 87.

(a) Generally.

(b) Act of June 4, 1897.

(a) Generally.

272. Circular regulations of June 30, 1897, and amendments. 24-589; 26-421; 27-301

273. Circular of September 16, 1909, relative to publication of notice of opening of forest lands. 38-207

274. Circular of August 1, 1905, relative to final proof on claims within national forests. 34-63

275. Instructions of December 31, 1910, relative to notices to forest officers of applications to make final proof. 39-436
276. Instructions with respect to notice of filing of township plat covering lands in national forests. 39-446
277. Regulations of September 12, 1910, respecting notice of proceedings and decisions in cases involving lands or claims in national forests. 39-200
278. Circulars of June 27 and November 25, 1910, governing hearings and appeals in cases involving lands or claims in national forests. 39-52, 374
279. Regulations of May 3 and June 26, 1907, relative to hearings on charges filed by forest officers. 35-547, 632
280. Circular of June 23, 1908, relative to proceedings on charges by forest officers. 36-535
281. Rules and regulations of April 4, 1900, under section 24, act of March 3, 1891, and amendments. 30-23.
113, 590; 31-173, 182
282. Circular of July 23, 1907, under act of June 11, 1906, relative to homestead entries in national forests. 36-30
283. Regulations of December 16, 1908, governing homestead entries in national forests. 37-355
284. Instructions of March 31, 1911, under act of March 3, 1911, concerning homestead entries in forest withdrawals. 39-618
285. Instructions of April 6, 1911, under act of March 3, 1911, respecting homestead entries of lands withdrawn for forest purposes. 40-2
286. Instructions of October 4, 1911, respecting publication of notice of opening of forest lands. 40-283
287. Directions given that publication of notices of restoration to settlement and entry of lands temporarily withdrawn with a view to possible inclusion in a national forest be reduced to a period of four successive weeks. 39-386
288. Circular of March 12, 1908, relative to surveys of homesteads in national forests. 36-305
289. Regulations of October 16, 1909, relating to surveys of homestead entries in national forests. 38-278
290. Circular of May 12, 1902, under act of April 15, 1902, relative to *bona fide* settlers in national forests. 31-331
291. Instructions of July 28, 1908, under act of March 13, 1908, relative to lieu selections for lands in Crow Creek National Forest. 37-76
292. Instructions of May 3, 1909, with respect to exchange of Chippewa allotments falling within national forest created by act of May 23, 1908. 37-665
293. Circular of May 16, 1905, under act of March 3, 1905, relative to repeal of forest lieu selection acts. 33-558
294. The respective jurisdictions of the Department of the Interior and the Department of Agriculture over applications for rights and privileges within forest reserves defined. 33-609
295. Directions given that all applications for rights of way or other privileges over or upon public lands in forest reserves, now pending before the General Land Office and falling wholly within the jurisdiction of the Department of Agriculture, be transmitted to that department for consideration and disposition. 34-64
296. Where applications for rights of way or other privileges affect lands partly within and partly without forest reserves, and involve questions within the jurisdiction of the Department of Agriculture and also questions within the jurisdiction of the Land Department, separate applications will not be required, but in such cases the application will be examined, and, if found regular, approved by the Land Department in so far as it affects lands without the reserve, and then transmitted to the Department of Agriculture for consideration and such action as may be proper relative to the lands within the reserve; but in event it appear that the right to use lands without reserve is subordinate to permission to use lands within the reserve, the application should first be passed upon by the Secretary of Agriculture. 34-64
297. Instructions of July 7, 1906, relative to withdrawal of certain lands in Wausan land district, Wisconsin, with a view to the selection of 20,000 acres thereof by the State, under the act of June 27, 1906, for forestry purposes. 35-11

298. The Secretary of the Interior has no power, without express legislative authority, to prescribe rules and regulations for the protection of fish in the streams in forest reserves. 35-277

299. The Secretary of the Interior has authority to make temporary withdrawals of public lands for the purpose of making examination thereof to determine the propriety of embracing them within a national forest. 37-277

300. Lands temporarily withdrawn with a view to inclusion in a national forest are not subject to entry under the act of June 11, 1906. 39-92

301. Lands temporarily withdrawn from entry for further examination with a view to inclusion in a definite forest reservation constitute "temporary forest reserves" within section 1 of the act of June 11, 1906. 39-411, 414

302. A homestead entry allowed subsequent to temporary withdrawal of the land with a view to possible inclusion in a national forest, based upon a valid settlement right initiated prior to survey and subsisting at the date of such withdrawal, excepts the land from a later proclamation including the land within a national forest, notwithstanding more than three months from the filing of the township plat had elapsed at the time the entry was made. 39-279

303. An order of withdrawal, issued by the Commissioner of the General Land Office, for the purpose of establishing a reservation of forest lands, takes effect on the day of its date and excludes all the public lands included therein from other appropriation. 20-32

304. For a proper purpose (preservation of "mammoth trees") made by the local office on the request of the surveyor general, if unrevoked, may be considered as approved by the department and the land included therein reserved from disposal. 11-60

305. The Secretary of the Interior may properly direct the withdrawal of land from disposal, in order to preserve sequoias or other large trees growing thereon. 20-327

306. Instructions to special agents in the matter of procuring the requisite information upon which to order the reservation

of forest lands under section 24, act of March 3, 1891. 12-499

307. Of certain forest lands in California directed by the act of October 1, 1890, not defeated by pending application to purchase such lands under the timber and stone act. 12-58, 326

308. Of forest lands by the acts of September 25 and October 1, 1890, does not take effect upon lands legally entered, but applications to purchase such lands, or filings therefor, will not defeat the operation of said statutes. 12-86, 326

309. Directions given for the temporary withdrawal of lands for Pike's Peak Park and for proceedings under the general instructions of May 15, 1891. 13-54

310. Of forest lands created by the President under section 24, act of March 3, 1891, may be restored to the public domain by the President without special authority from Congress. 14-209

311. Of forest lands under the act of 1891 does not remove such lands from the control of the department, and for carrying out the provisions authorizing the withdrawal the department may make all necessary regulations. 15-284

312. Lands embraced within a temporary withdrawal by the department with a view to creating a forest, under the act of 1891, are by such order excluded from settlement and entry pending action by the President. 16-190

313. Directions given that specific exception be made of mineral lands in all orders for the temporary withdrawal of lands from entry and location with a view to determining whether they shall be included within a permanent forest reservation. 32-307

314. Lands within a forest reserve, not known to contain valuable mineral deposits, may be appropriated to such uses as may be necessary to carry out the aims and accomplish the ends contemplated in the establishment of the reserve. 35-242

315. The executive department of the Government has no power to include within and as a part of a forest reserve lands within an abandoned military reservation turned over to the Secretary of the Interior, pursuant to law, for disposal under the acts of Congress providing for the dis-

position of lands in abandoned military reservations. (See 36-342.) 35-277

316. There is nothing in the act of July 5, 1884, providing for the disposition of lands in abandoned military reservations to prevent the reservation of any such lands for a national forest under section 24, act of March 3, 1891. 36-342

317. The lands ceded by the Blackfeet Indians under the agreement ratified by the act of June 10, 1896, and subsequently included within the Lewis and Clarke Forest Reserve are subject to the provisions of the act of June 11, 1906, relating to the entry of agricultural lands within forest reserves. 35-431

318. An order of the President withdrawing, is effective upon lands formerly embraced within the Ute Reservation but restored to the public domain by act of June 15, 1880. 19-383

319. An order withdrawing, will defeat the right of a contestant who subsequently secures the cancellation of an entry made prior to the withdrawal and within the limits thereof. 18-523; 19-489

320. Section 2, act of March 3, 1911, protecting the preference rights of successful contestants where the lands embraced in the contested entries have been included in national-forest withdrawals, applies to all contests initiated under the act of May 14, 1880, prior to the withdrawal, where cancellation of the entry results therefrom, regardless of whether cancellation was procured prior or subsequent to the withdrawal. 39-611

321. When actual possession of land held in private right in a forest reserve is abandoned by the owner, and conditions exist by reason of fallen or dead timber which make it a menace to the safety of the forest growth on the reservation, it is within the power of the Secretary of the Interior to take proper measures for the abatement of such conditions. 32-110

322. The act of October 1, 1890, setting apart the forest reserve known as "Yosemite National Park" confers no authority upon the Secretary of the Interior to permit the use of lands therein as a right of way for canals or ditches for any purpose whatever. 28-474

323. Under the act of February 15, 1901, lands in forest reserves created under authority of the act of March 3, 1891, may be appropriated and used for irrigation works constructed by the United States as well as for works constructed by individuals. 33-389

324. The Secretary of the Interior has the same right to withdraw lands within the Yosemite National Park, created by the act of October 1, 1890, for the uses and purposes contemplated by the act of June 17, 1902, that he has to withdraw lands for such purposes within forest reservations created under authority of the act of March 3, 1891. 33-389

325. The act of October 1, 1890, directing the establishment of the Yosemite National Park did not affect or impair rights acquired under a mineral location duly made prior to the act, and the owner of such a claim should be permitted the necessary use, for purposes of ingress and egress, of lands reserved by said act, subject to such reasonable rules as may be made by the Secretary of the Interior. 25-48

326. The Secretary of the Interior has authority to permit the owner of lands within the Yosemite National Park to construct and use a wagon road over the park lands, where necessary for the purpose of ingress and egress in the appropriate development and utilization of the latter's property, under such restrictions and regulations as shall "provide for the preservation from injury of all timber, mineral deposits, natural curiosities, or wonders within said reservation, and their retention in their natural condition." 32-662

327. Circular of July 7, 1905, under act of February 7, 1905, relating to rights of way over lands segregated from Yosemite National Park and included in Sierra Forest Reserve. 34-15

328. Instructions of June 19, 1906, under act of March 15, 1906, relative to opening of certain lands in Yellowstone Forest Reserve to settlement and entry. 34-700

329. The right of a miner to cut timber within a forest is restricted to the land embraced within his mining claim. 25-48

330. The words "entry" and "filing" used in the proclamation of February 14,

1893, establishing the Sierra Forest Reserve to describe lands excepted from such reservation, must be taken in their proper technical meaning, and as applicable only to record claims made under the general land laws, and not including a railroad indemnity selection. 28-282

331. An applicant for the right of timber-land entry within the Cascade Forest Reserve can not be heard to plead settlement on the land prior to the proclamation, for his timber-land application operates as a waiver and abandonment of all right under his alleged settlement. 28-573

332. The lands excepted by settlement claims from the proclamation of September 28, 1893, establishing the Cascade Range Forest Reserve, were limited to those upon which a valid settlement had been made, and the statutory period for filing or entry had not expired at the date of the proclamation. 28-573

333. In view of the fact that the proviso in the proclamation of September 20, 1906, creating the Lola National Forest, excepting all lands "covered by any valid prior claim, so long as the . . . claim exists," fails to require that the settler shall file his declaration or make entry within any particular period as a condition to having the tract settled upon excepted from the operation of the withdrawal, a settlement claim will except the land covered thereby so long as the settler continues to comply with the law in the matter of residence, cultivation, and improvement, notwithstanding he may fail to make entry within three months after filing of the township plat of survey. 38-587

334. The excepting clause of the proclamation establishing the Olympic Forest Reservation ceases to be operative in behalf of a settler who fails to make entry or filing for the lands settled upon within the time allowed by law. 31-47

335. The excepting clause of the proclamation establishing the Sierra Forest Reservation ceases to be operative in behalf of a settler who fails to make entry or otherwise place of record his claim for the land settled upon within the time allowed by law. 31-80

336. Instructions of September 22, 1899, with respect to entries in Black Hills Forest Reserve. 29-190

337. The act of March 3, 1899, relating to lands in the Black Hills Forest Reservation, did not abrogate and annul that portion of the Executive order creating said reservation which prescribed what lands are excepted from the operation of that order, but merely provided that entries might be made so as to include the improvements of settlers regardless of legal subdivisions of the land. 31-57

338. Lands within said reservation which at the date of the Executive order creating the same were covered by a valid settlement for which filing was not made within three months after the filing of the township plat do not come within the exception mentioned in said order, and are therefore not subject to entry under said act of March 3, 1899. 31-57

339. The act of March 3, 1899, does not confer upon settlers in the Black Hills Forest Reserve the right to make entry of irregular-shaped tracts, except where the improvement of the settler can not be saved and protected by making entry according to legal subdivisions, and in such case he may designate what portions of the tracts he desires to have surveyed and may omit any part of his improvements, even though it be his residence, provided the entry be made as nearly as practicable in square form and the tracts are contiguous. 22-522

340. The survey of a homestead claim in the Black Hills Forest Reserve, by metes and bounds, under the act of March 3, 1899, will not be made where the claim is not as nearly as practicable in square form and parts thereof are of less width than the smallest legal subdivision. 32-455

341. The fact that the diagram upon which the proclamation of July 1, 1908, adjusting the lines of lands theretofore reserved for forest purposes so as to eliminate certain lands from the Bitter Root Reservation and place them in reservations of other designations, erroneously showed certain tracts within the withdrawal for the Bitter Root Forest Reserve made by the proclamation of May 22, 1905, to have been omitted from such reserva-

tion, does not have the effect to release them from reservation, in view of the provision in the later proclamation that it was not intended by such adjustment to release any land from reservation, and the lands so erroneously omitted from the diagram are not therefore subject to appropriation as unreserved public lands.

40-599

342. One who since the act of August 30, 1890, has acquired title to 320 acres in the aggregate under the agricultural public-land laws is disqualified to make entry in a national forest under section 2 of the act of June 11, 1906.

38-566

343. Where the homestead right is initiated by settlement upon unsurveyed land under the act of May 14, 1880, and the homesteader dies prior to survey, having complied with the law to the date of his death, his heirs are entitled to complete the claim and acquire title; and where they continued to comply with the law and made application within three months after survey, their claim was such as excepted the land from the proclamation of May 29, 1905.

38-219, 224

344. That part of paragraph 8 of the circular of December 16, 1908, which provides for the patenting of forest homestead entries without the necessity of a special survey where the lands are described as "a quarter or a half of a surveyed quarter-quarter section or rectangular lotted tract" applies to legal subdivisions designated as lots only when they are true rectangles as shown by the plats of survey; and a special survey will be required of all claims not described in accordance with a strict construction of said paragraph.

38-481

345. Lands within a national forest listed under the act of June 11, 1906, as subject to homestead entry, may be appropriated only under that act; and the fact that they are also embraced within a larger area designated as of the class subject to entry under the enlarged homestead act of February 19, 1909, does not render them subject to disposition under said act.

39-604

346. The act of February 28, 1899, authorizing the Secretary of the Interior to lease lands adjacent to mineral springs within forest reserves, for hotel or sani-

tarium purposes, contemplates the leasing of land not wholly occupied by the hotel or sanitarium, whenever such action is necessary to the proper conduct of such hotel or sanitarium, and to make the beneficial properties of the springs available to the public.

28-386

347. In the proclamation creating the San Gabriel Forest Reserve an exception was made of "all lands . . . upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired," and an entry, based on such a settlement, must be held to have been made in due time, where the application is filed within three months after the land is opened to entry.

29-298

348. Lands within a forest reserve, which at the date of its establishment are covered by a lawful preemption filing of record, are excepted from such reserve subject to claimant's continued compliance with law; but in event of the cancellation of such filing the land at once becomes a part of the reserve.

30-158

349. The departmental regulations to be issued under the act of March 2, 1899, setting apart certain lands for a national park, should provide for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonders within said park, but should declare that they do not prevent or interfere with the *bona fide* exploration, location, occupation, and purchase, according to the mineral laws of the United States, of the mineral lands lying within said park.

28-492

350. The question as to the character of land for which selection is tendered by the railway company under the act of March 2, 1899, is solely between the Government and the company, and where no protest is lodged against a selection, *prima facie* regular and in accordance with the terms of the act, upon the ground that the land selected is mineral in fact and was known to be such at the time of selection, the company will be permitted to perfect its claim.

37-135

351. The fact that lands were classified as mineral under the act of February 26, 1895, will not prevent selection thereof by the railway company under the act

of March 2, 1899, if otherwise within the terms of that act. 37-135

352. Lands "classified as nonmineral" at the time of survey, are of the class subject to selection under the act of March 2, 1899, and the character of lands so classified and selected will not be investigated on a protest presented after the survey and selection and alleging the present mineral character of the lands. 32-28

353. When the field notes and surveyor's return make no notation whatever of minerals in the land being surveyed, such lands are considered and treated as given a nonmineral classification. 32-28

354. Only lands in fact nonmineral and classified as such at the time of the Government survey are subject to selection by the Northern Pacific Railway Co. under the act of March 2, 1899; and the Land Department is without authority to permit selection of lands not so classified, even though they may in fact be nonmineral. 40-64

355. There can be no lawful selection of lands under section 3, act of March 2, 1899, until a proper deed has been filed and approved by the department, conveying to the United States the lands in lieu of which selection is made; and such a deed does not relate back to a prior defective unapproved deed and selection made thereunder, so as to cut out intervening adverse claims. 30-145

356. The Northern Pacific is not authorized to select coal lands in lieu of lands relinquished under section 3 of the act of March 2, 1899. 31-29

357. The even-numbered sections alternate to those granted in aid of the construction of the Northern Pacific are not "reserved" within the meaning of section 3 of the act of March 2, 1899. 31-198

358. Lands covered by a *bona fide* settlement claim on the date of their selection under section 3 of the act of March 2, 1899, are not of the class of lands subject to selection under said act; and where, pending proceedings before the Land Department to determine the rights of the parties under their conflicting claims, the lands are inadvertently patented to the company, and it is subsequently determined by the Land Department that the settler has the superior right, demand will

be made upon the company for reconveyance of the lands to the end that the settler may perfect title thereto. 33-319

359. Land embraced within a *bona fide* settlement claim is not subject to selection under section 3 of the act of March 2, 1899, and a selection allowed for land at the time covered by such claim can not stand, notwithstanding the settlement claim may have been subsequently abandoned. 37-193, 502

360. An affidavit of contest against a selection under section 3 of the act of March 2, 1899, based upon prior settlement, should allege that the settler was at the date of such settlement qualified to enter the land under the homestead law. 37-502

361. The grant of public lands made to the Northern Pacific Railway Co. by the act of July 2, 1864, does not include areas covered by glaciers, and such areas in the Mount Rainier National Park or Pacific National Forest may not therefore be accepted as bases for lieu selections by said company under the provisions of the act of March 2, 1899. 40-441

362. Section 3 of the act of March 2, 1899, authorizing the Northern Pacific, upon the relinquishment of lands in the Mount Rainier National Park and the Pacific Forest Reserve theretofore granted to said company, to select, in lieu thereof, an equal quantity of nonmineral public lands, does not contemplate the relinquishment by the company of the lands within these reservations falling within the secondary or indemnity limits of its grant, the same not having been selected and not being subject to selection at the date of the passage of said act, with the consequent right of selection of other lands in lieu thereof, but applies only to the lands within the primary or place limits to which the rights under the grant had attached at that date. 33-621

363. Even if it be admitted, as contended by the company, that the Northern Pacific land grant can never be fully satisfied from selections made within the limits provided for in the act of July 2, 1864, and the joint resolution of May 31, 1870, such fact furnishes no authority for permitting the company to relinquish the lands within the Mount Rainier National

Park and the Pacific Forest Reserve falling within the secondary or indemnity limits of its grant, and to select other lands in lieu thereof, under the act of March 2, 1899. 34-148

364. Section 4 of the act of March 2, 1899, recognizes the right of the Northern Pacific to take unsurveyed lands in making selection under that act. 37-70

365. The requirement in the circular of November 3, 1909 (38 L. D., 287), that in making selections of unsurveyed lands they shall be described by metes and bounds, with courses, distances, and reference to monuments by which the location thereof on the ground can be readily and accurately ascertained, will not be given retroactive effect; and selections under act of 1899 made prior thereto will not be held defective as to description where the tracts selected are designated, in accordance with the practice then prevailing, as "lands which when surveyed will be described as follows," setting forth an approximate description of the tracts by section, township, and range. 38-491

366. The fact that a tract of unsurveyed land included in a list of selections filed by the Northern Pacific under section 4 of the act of March 2, 1899, was properly described in said list according to the description thereof in the official survey subsequently approved, does not relieve the company from filing a second list, within three months after the plat of survey of the township in which the land is situated is filed in the local land office, describing such tract according to such survey, as required by said section; and failure to file such second list within the required time subjects the land to intervening claims. 31-396

367. In case of the selection of unsurveyed lands by the company under the act of March 2, 1899, a new selection list must, in view of section 4 of said act, be filed within three months after the plat of survey is filed in the local office, describing the lands according to such survey; and in case of failure to file such new list within the time limited, the lands at the expiration of such period become at once subject to appropriation by the first legal applicant. 33-503

368. In order to successfully assert, as against an intervening railroad selection made under the act of March 2, 1899, a right or claim acquired by settlement upon unsurveyed land with a view to entry thereof under the homestead laws, the homestead applicant must show that he established an actual residence upon the land within a reasonable time after settlement and that such residence had been maintained to the date of the presentation of his homestead application. 31-196

369. The Northern Pacific is not restricted, in making selections under the act of March 2, 1899, to lands in the odd-numbered sections within the indemnity limits of its grant, but may make such selections from any of the public lands, of the class described in the act, "lying within any State into or through which the railroad of said Northern Pacific Railroad Co. runs." 33-635

370. The provision of the act of June 6, 1900, which declares that subsequently to October 1, 1900, "all selections of land made in lieu of a tract covered by an unperfected *bona fide* claim, or by a patent, included within a public forest reservation . . . shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry," applies only to selections made under the act of June 4, 1897, and has no application to selections made by the Northern Pacific under the act of March 2, 1899. 34-88

371. Where unsurveyed land selected by the Northern Pacific under the act of March 2, 1899, is found upon survey to be in excess of the base assigned to support the same, the company will not be permitted, in the face of an intervening adverse claim, to supply new base to equal the selection, but is restricted to the amount of land to which it is entitled upon the base assigned. 39-229

372. Agricultural lands selected by the Forester of the Agricultural Department under the act of June 27, 1902, to be included in the forest reserve provided for in said act as "necessary to the economical administration and protection" of such reserve, do not become part of such contemplated reserve by virtue of their selection for the purpose mentioned, but

are merely in the condition of lands withdrawn from settlement or other disposal with a view to their future reservation when the occasion therefor shall arise by the forest reservation coming into existence. 32-559

373. The prohibition in the act of March 4, 1907, against the creation or enlargement of forest reserves within certain States except by act of Congress, in no wise affects the right of the executive department, in the exercise of the general power to reserve portions of the public domain for public uses, to set apart a tract of land for use in connection with the administration and protection of forest reserves heretofore created. 36-314

374. Prior to becoming part of a forest reserve by removal of 95 per cent of the timber therefrom, lands withdrawn for forestry purposes under the act of June 27, 1902, are merely in a state of withdrawal with a view to future reservation, and remain under the administrative power of the Secretary of the Interior as the head of the Land Department. 32-641

375. The proclamation of the President of May 29, 1903, creating the Logan Forest Reserve, took effect from the first moment of that day, and selections made by the State on the same date, within the boundaries prescribed, are therefore subsequent to the proclamation and can have no effect to except the lands from the reservation. 33-510

376. The filing of an application for survey under the act of August 18, 1894, having such survey made, and paying the fees therefor, do not, in the absence of publication of notice of the application as provided by said act, constitute a "lawful filing" within the meaning of the excepting clause of the proclamation of June 12, 1905, reestablishing the boundaries of the Washington Forest Reserve. 37-2

377. No such preferential right of selection is secured by the application of a State for the survey of lands under the act of August 18, 1894, as will prevent inclusion of the lands within a national forest; and such application does not constitute a "filing" or "entry" within the meaning of the excepting clause in the proclamation of May 29, 1905, establish-

ing the Sawtooth, now Boise, National Forest. 38-219, 224

378. Opinion of Attorney General to the effect that no such preference right was acquired by the State of Idaho by its application for survey of lands under the act of August 18, 1894, as prevented inclusion of the lands in the Sawtooth, now Boise, National Forest. 39-482

379. Where, after application by the State of Utah for the survey of lands under the act of August 18, 1894, but prior to filing of the plat of survey, a temporary withdrawal embracing the land was made with a view to the establishment of a forest reserve, and the State was thereafter, within due time after the filing of the plat of survey, permitted to make selections of the lands, subject to final determination of the boundaries of the proposed reserve, such selection, being still of record on May 29, 1903, the date of the proclamation creating the Logan Forest Reserve, embracing the land in question, is a "lawful filing" within the meaning of that term as used in the excepting clause of the proclamation, and the approval of the selection and certification of the lands to the State subsequent to the creation of the reserve was proper. 33-283

380. Where, after application by the State of Utah for the survey of lands under the act of August 18, 1894, but prior to filing of the plat of survey, a temporary withdrawal embracing the land was made with a view to the establishment of a forest reserve, and the State was thereafter, within due time after the filing of the plat of survey, permitted to make selection of the lands, subject to final determination of the boundaries of the proposed reserve, such selections, being still of record at the date of the Executive proclamation creating the reserve, although not approved by the Land Department, are lawful filings within the meaning of the excepting clause of the proclamation, and the lands embraced therein are therefore excepted from the reservation; but selections of lands so situated made subsequently to the date of the proclamation can have no effect to except the lands from the reservation. 33-358

381. Where survey of a township is made upon application by a State under the act of August 18, 1894, but prior to the filing of the plat thereof the township is temporarily withdrawn with a view to its possible inclusion within a contemplated forest reserve, and the State is thereafter, within due time after the filing of the plat of survey, permitted to make selections of lands therein subject to final determination of the boundaries of the contemplated reserve, the Land Department has full authority, the establishment of the forest reserve embracing the lands in question being determined upon, to cancel such selections with a view to preserving the lands covered thereby to the reservation when created. 35-52

382. Selections by the Northern Pacific Railway Co. under the act of March 2, 1899, proffered subsequent to the application of the State for survey of the lands under the act of August 18, 1894, and while the lands were reserved from appropriation adverse to the State, are not, upon rejection of the subsequent application by the State, entitled to recognition as of the date of presentation, to the prejudice of the rights of settlers. 39-583

(b) Act of June 4, 1897.

383. Regulations of June 30, 1897, and amendments. 24-589;

26-421; 27-301

384. Circular of May 9, 1899, with respect to selections in lieu of lands included in forest reserves. 28-521

385. Circular of December 18, 1899, as to selections in lieu of land in forest reserves. 29-391

386. Rules and regulations of April 4, 1900, under section 24, act of March 3, 1891, and amendments.

30-23, 113, 590; 31-173, 182

387. Circular of July 7, 1902, relative to lieu selections. 31-372

388. Circular of May 16, 1905, under act of March 3, 1905, relative to repeal of act of June 4, 1897. 33-558

389. Instructions of July 5, 1906, under Senate resolution of March 19, 1906, relative to persons and corporations who had relinquished or conveyed lands in forest

reserves to the United States prior to repeal of act of June 4, 1897. 35-8

390. By the act it was the purpose of Congress to provide a complete scheme for the control and administration of forest reserves, and by the last proviso of the amendatory act of June 6, 1900, it was intended that forest reservations then existing or thereafter to be created in the State of California should be exempted from the operation of said amendatory act only, the act of 1897 remaining in force, unchanged, as to such reservations. 30-377

391. The act provides for the control and administration of all public lands set apart as forest reserves by the President, under section 24, act of March 3, 1891, but makes no grant of right of way through these reservations, and does not give the Secretary of the Interior any new or additional authority to permit the use of a right of way through them or within their boundaries, and is not applicable to reservations created by special act of Congress. 28-474

392. The provisions in the act for an exchange of land included within forest reservations, and covered by an unperfected *bona fide* claim or by patent, are applicable only to forest reservations established by Executive action under section 24, act of March 3, 1891, and do not extend to reservations, or national parks, created by special acts of Congress. 28-472

393. The act was intended to provide for extinguishing private title to such lands only as would be a part of an established forest reservation if it were not for their private ownership. 29-597

394. Two distinct classes of exchanges are authorized by the act: First, perfected titles, where title is given and title is received, in which case nothing is required to be done by the selector but to vest the United States with good title to the land relinquished in a forest reserve and to select the land taken in lieu thereof in accordance with the law and regulations governing such exchanges; and, second, unperfected claims, wherein the lands taken in exchange are taken by the selector with credit for his previous partial compliance with the law governing his

entry, settlement, or claim upon the relinquished land, but with obligation under such law to do such acts as he had, prior to his relinquishment, not yet performed.

34-126

395. The provision of the act allowing credit upon the selected land for compliance with law upon the land relinquished as base is applicable to desert-land entries.

36-28

396. The phrase "public lands adjacent thereto," as used in said act, in making provision for the survey of forest reserves, should be construed to mean townships which actually adjoin said reserves, and such townships are to be surveyed under the supervision of the Director of the Geological Survey.

24-588

397. In the survey of forest reserves under said act the phrase "public lands adjacent thereto" should be construed to mean townships, either fractional or entire, actually adjoining such reservation.

25-140

398. Unsurveyed land can not be taken, under the act, in lieu of a relinquished claim within a forest. (See 28-284.)

27-472

399. Unsurveyed as well as surveyed land, which is vacant and open to settlement, may be selected in exchange for forest lands.

28-284

400. While lands embraced within a forest reserve may be excluded, because shown to be more valuable for agricultural than for forest purposes, until formally restored to the public domain, such lands are not subject to general disposition, and no rights can be acquired by the attempted entry thereof.

29-531

401. If agricultural lands are improvidently included in a forest reservation they can be eliminated therefrom only by a proclamation from the President, or by the action of Congress, and, until so eliminated, such lands will continue a part of the reservation.

29-593; 30-44

402. Public land suspended from disposition by direction of the Commissioner of the General Land Office, with the approval of the Secretary, is not subject to selection under said act.

31-318

403. Applications to amend lieu selections are governed by the same rules governing applications to amend homestead

or other entries, and to support such an application it must be shown that the tract covered by the proposed amendment is the land originally selected, after inspection, and that the mistake was made through no fault of the applicant.

35-223

404. The act in providing for an exchange of lands within forest reservations for public lands outside of said reservations, does not authorize the relinquishment of mineral lands as a basis for lieu selections.

28-328

405. Land known to be mineral at the time of its attempted relinquishment can not be accepted as base for selections under said act.

32-410

406. The regulations of April 4, 1900, do not in terms include or exclude mining companies or corporations, and it rests with the Secretary of the Interior to determine whether these regulations shall include or exclude such companies or corporations.

30-462

407. Coal lands are mineral lands within the meaning of the act, and as such are subject to entry, when found in forest reservations, the same as other mineral lands within such reservations.

30-92

408. A company or corporation engaged in mining or in prospecting for valuable mineral deposits is a "miner" or "prospector," as the case may be, within the meaning of the act.

30-462

409. The act does not in itself permit any person, company, or corporation to use, free of charge, stone or timber found upon a forest reservation, but confers upon the Secretary of the Interior authority to say, through regulations prescribed by him, by whom, among those named, and when and to what extent, the privilege named in the statute may be enjoyed.

30-462

410. The mere location of a mining claim upon land subsequently patented to a railroad company under its grant as nonmineral, and as to which land there has been no assertion of mineral character or right for 18 years, does not constitute a cloud upon the title, or suggest the mineral character of the land, so as to prevent its acceptance as a basis for the selection of other land in lieu thereof.

33-72

411. No right or title is acquired by a mining location or mineral discovery made upon land held in private ownership, and such location and discovery do not constitute a cloud upon the title such as will bar the acceptance of a relinquishment for the land, when situated within a forest reserve, as a basis for the selection of other lands in lieu thereof; but in such case proof will be required that at the date of the filing for record of the deed of relinquishment there were no known valuable mineral deposits upon the land.

33-68

412. Lands in California claimed under the swamp-land acts, which have never been identified as of the character granted under those acts, and which have never been certified or patented to the State, are not the subject of relinquishment or exchange under the act.

31-303

413. Lands claimed under the grant to Oregon by the act of July 2, 1864, to aid in the construction of a military road, for which no patent has issued, nor any legal equivalent thereof, are not a sufficient basis for an exchange under the act.

31-215

414. A relinquishment of lands in a forest reserve in New Mexico, with a view to the selection of other lands under the act of June 4, 1897, will not be accepted unless in all conveyances affecting the title to the lands relinquished the grantor, if married, was joined by the wife, or it is clearly shown that she is precluded from asserting any interest in the land.

32-566

415. Under the exchange provisions of the act, C., the owner of lands covered by a patent from the United States and situate within a public forest reservation, filed in the Visalia, Cal., local land office, a relinquishment of his lands in the forest reservation, accompanied by evidence of his full and unincumbered title thereto, and at the same time made selection, by appropriate application in writing, of a like area of public lands in the Visalia land district desired in exchange for the lands relinquished, accompanying the selection by an affidavit declaring the selected lands to be unoccupied and non-mineral. Shortly thereafter K. Company and others filed sworn and corroborated

protests against the selection, alleging that the selected lands, at the time of their selection, were occupied by protestants under the placer mining laws and were then known to be valuable for their deposits of petroleum or mineral oil. The selection has not been carried to patent. Held:

(1) The Land Department has jurisdiction and power, either on its own motion or at the instance of third parties, at any time before a patent is issued upon a selection made under the exchange provisions of said act and after appropriate notice, to institute and carry on such proceedings as may be necessary to enable it to determine whether the selected lands were at the time of their selection in the condition and of the character subject to selection.

(2) Lands chiefly valuable on account of the deposits of petroleum or mineral oil found therein are mineral in character and not subject to selection under said act.

(3) The protests of K. Company and others require that a hearing be ordered to determine the condition and character of the lands selected.

(4) The inquiry will be directed to the conditions existing and known at the time when the selection was made, and no consideration will be given to any change subsequently occurring or to any discovery or development of mineral thereafter made.

(5) The evidence bearing upon the character of the selected lands will not be restricted to the discovery or development of mineral therein and to their geological formation, but may extend to the discovery and development of mineral in adjacent lands and to their geological formation.

30-583

416. The department finds from the evidence adduced at the hearing had in accordance with the directions contained in departmental decision of May 8, 1901, that on the date the selections were filed, the lands were of known mineral character, and were not, therefor, subject to selection.

33-291

417. No rights become vested in a selector until there has been a concurrence of (1) a relinquishment of the base land with proof that the relinquishment car-

ries full title, and (2) a selection of other land in lieu of that relinquished with proof that the land selected is at the time of such concurrence of the character and condition subject to selection. 31-312

418. The essential requirements to be complied with by a person seeking title to land in exchange for land in a forest reservation, are: (1) He must relinquish to the Government the tract in the forest reservation, and submit satisfactory evidence respecting title thereto; (2) he must make selection of the tract desired in exchange for the tract relinquished, and accompany the selection by proof showing the selected land to be of the condition and character subject to selection. 30-550

419. The Land Department has jurisdiction and power, either of its own motion or at the instance of third parties, at any time before patent is issued, and after appropriate notice, to institute and carry on such proceedings as may be necessary to enable it to determine whether the selected lands were of the requisite class and character and whether the selection was in other respects regular and in conformity with the requirements of the act. But the determination must relate to the time when the selector has done all that is required of him in order to perfect his right to a patent. 30-550

420. Questions respecting the class and character of the selected lands are to be determined by conditions existing at the time when all requirements necessary to obtaining title have been complied with by the selector, and no change in such conditions, subsequently occurring, can affect his rights. 30-550

421. It is incumbent upon one wishing to take advantage of the offer of exchange to submit with his selection proof that the title to relinquished lands, to which he claims full title, has passed out of the United States by some means the full legal equivalent of a patent and is vested in him, and that at the date of selection the selected lands are unoccupied and nonmineral in character. Until such proof is submitted a selector has not done that which converts the offer of exchange into a contract fully executed on

his part whereby he secures a vested right in the selected lands. 30-570

422. Ordinarily, as between the Government and a selector, he might be permitted to perfect the selection by supplying the necessary proof at a subsequent time, but his rights would be determined as of the date the selection was thus completed. In this case no such proof has been supplied, and it is admitted by the selector that the lands attempted to be selected are now known to contain valuable deposits of mineral oil; hence these selections can not now be perfected. 30-570

423. An applicant, who has in other respects complied with the statute and regulations but has failed to furnish proof of the character and condition of the land selected, may subsequently perfect his selection by submitting proof that such land was at the time of selection, and still continues to be, of the character and condition subject to selection, the rights of the selector to be determined as of the date when the selection is thus completed. 31-220

424. Wherever, by act of Congress, provision is made for disposal of public lands of a designated class and character, selection or entry thereof can not lawfully be permitted until the lands are shown to be of the class and character subject to disposal thereunder. When the evidence to enable such determination to be made does not appear from the land-office records, it must be furnished by those who seek title under the act. 31-288

425. In so far as existing conditions appear from the land-office records, no showing by the selector need be made, because the officers of the Government must take notice of the public records; but as to conditions the existence or nonexistence of which can not be determined by anything appearing upon these records, the required evidence must be furnished by the selector. 30-550

426. The right to a patent under the act, once vested, is, for most purposes, the equivalent of a patent issued: and when in fact issued, the patent relates back to the time when the right to it became fixed, and takes effect as of that date. 30-550

427. A person making selection under the act, who has complied with all the terms and conditions necessary to entitle him to a patent to the selected land, acquires a vested interest therein and is to be regarded as the equitable owner thereof. 30-550

428. Until an application to make lieu selection has been approved, the Land Department has jurisdiction to determine whether the proposed exchange should be consummated. 36-495

429. The presentation of an application to make lieu selection prevents the assertion of a subsequent claim, but does not preclude inquiry by the Government as to the character of the land applied for, which question remains open for investigation and determination until the equitable title passes. 36-495

430. Until the Land Department shall have determined the questions of law and fact involved in a proffered lieu selection, and a formal approval has been given, the equitable title to the lieu lands does not pass from the Government, and the question of their mineral or nonmineral character, and the consequent exclusion of such as are ascertained to be mineral, is open. 36-492

431. A pending unapproved application to make forest lieu selection will not prevent withdrawal of the lands embraced therein for the purpose of reserving the power sites thereon for public uses. 40-549

432. Under proceedings in the Land Department to acquire title to public land, no rights in the land become vested in the party seeking title until he shall have performed all the conditions and fulfilled all the requirements necessary to establish his right to a patent. 31-288

433. An entry or selection of public lands which is not so far perfected as to confer an equitable title or vested right does not take the land included therein out of the operation of the mining laws; but, ordinarily, where an entry or selection of public lands is received and recognized by the local officers, it will, while pending, prevent the receipt or recognition of other applications for the same land until such entry or selection is disposed of. 31-352

434. While an application to select is pending, and until it is disposed of, the lands involved are not subject to other entry, and no subsequent application not based on antecedent claim of right in the land will be received or recognized. 33-295

435. Where a selection tendered under the act is in conflict with a prior pending application, the selector should be apprised of the conflict and given opportunity to protect his rights by proper proceedings. 34-122

436. Where a selection tendered under the act is in conflict, in part, with prior pending applications, it should not, for that reason, be rejected in its entirety, but the selector should be afforded opportunity to protect his rights by proper proceedings. 34-301

437. An application to make lieu selection should not be received during the pendency of a prior similar application for the same land; but where a second application was so received prior to October 1, 1900, and held, awaiting disposition of the prior application, until after that date, it will, upon the final rejection of such prior application, be treated as within the exception or saving clause of the act of June 6, 1900. 31-185

438. An application to make lieu selection should not be received during the pendency of a prior similar application for the same land; but where a second application is so received, and the first is canceled prior to action thereon, it may be regarded as attaching immediately upon cancellation of the first, if no adverse rights exist. 33-461

439. No vested right is obtained until the selector has perfected his selection by the submission of proof that the selected land is nonmineral and unoccupied; and until this condition is complied with the land is subject to exploration under the mining laws, and if found to be mineral in character is no longer subject to selection, and no right can be secured by any subsequent attempt to perfect an incomplete selection under which no right vested prior to the development of the mineral quality of the land. 31-220

440. The fact that land embraced in an application to make forest lieu selection

under the acts of June 4, 1897, and March 3, 1905, has been classified as coal is no bar to the right of the applicant to complete his application under the provisions of the act of June 22, 1910, by taking the limited patent provided by said act, or the right to a hearing with a view to disproving such classification and establishing his right to an unrestricted patent.

40-276

441. The general statements in the non-mineral affidavit filed in support of an application to select, that there are not within the limits of the land any placer, cement, gravel, "or other valuable mineral deposits," and that the land is "essentially nonmineral land," will not be accepted as a sufficient compliance with the requirements of the circular of November 14, 1901, relative to proof of the non-saline character of the land.

33-121

442. Where the nonmineral affidavit filed with an application to select, taken as a whole, and considering all its parts, clearly shows that each of the tracts is nonmineral, is subject to homestead entry, contains no deposit of coal, or other minerals, and is not subject to entry under the coal or other mineral laws, the fact that in one portion of the affidavit the statement that the land contains no mineral deposits is qualified by the word "valuable," does not render the affidavit defective.

33-109

443. In a case where, before a selector complies with the terms and conditions necessary to secure a vested right, it is shown by exploration and development that the selected tract is in fact mineral, and is claimed and occupied under a mining location, the selection must be rejected.

31-312

444. The reason for the requirement in the instructions of March 6, 1900, that the nonmineral affidavit filed with an application to make lieu selection should state whether the land is within 6 miles of any mining claim, does not exist where publication has actually been had as required by the regulations of December 18, 1899.

31-251

445. Upon final rejection of an application to make selection, on account of defective title to the base tendered, the applicant is entitled to have returned to him

the deed of relinquishment and abstract of title to the base lands submitted in support of his application.

33-333

446. Lands relinquished to the United States under the act, while within a forest reserve, but subsequently excluded from such reserve, do not become public land subject to entry until the title tendered has been accepted and approved.

33-43, 501, 589

447. The right of a settler residing upon land excluded from a forest reserve, but embraced in a relinquishment executed under the act while the lands were within the reserve, attaches at the instant the land becomes subject to private appropriation, by acceptance of the title tendered and consummation of the exchange under the act, and, if duly asserted, will prevail as against an application to enter not based upon rights acquired by settlement and residence.

33-589

448. Upon approval of an application to make forest lieu selection the title of the Government to the lands relinquished as base therefor attaches, under the doctrine of relation, as of the date the selection was perfected and entitled to be approved; and the relinquished lands are not, subsequent to that date, subject to taxation by the State; and the selector will not be required to make any showing as to whether or not taxes have been assessed against the relinquished lands after the date the selection was completed.

40-108

449. The owner of lands within a forest reservation, who executed and delivered to the United States a deed therefor, and prior to October 1, 1900, made application for specific tracts of unsurveyed land in lieu thereof, is excepted from the provision of the act of June 6, 1900, restricting lieu selections thereunder to surveyed land.

31-184

450. The act of June 6, 1900, restricting lieu selections to surveyed lands, does not prevent the owner of lands within a forest reservation, who executed and delivered to the United States a deed therefor, and, prior to October 1, 1900, made application for specific tracts of unsurveyed land in lieu thereof, but failed to file therewith, or prior to October 1, 1900, the required proofs showing the condition and character of the selected lands, from sub-

sequently, if the condition and character of the lands then permit, perfecting his selection by supplying the requisite proofs, the right of the selector to be determined as of the date when the selection is thus completed. 31-186

451. Before any selection can be approved, whether the tract relinquished as the basis therefor is covered by an unperfected *bona fide* claim or by a patent, it must be determined that the land selected was, at the time of selection, of the character and condition subject thereto, and also that the tract relinquished was, at the same time, subject to the relinquishment. Such determination, however, in any case wherein the tract relinquished is covered by a final certificate, does not call for or require the issuance of a patent for such relinquished tract, but is instead, in effect, a determination that patent shall not issue upon such certificate, that the full legal title to the tract is not to pass out of the Government by virtue of the certificate or of the law under which the same was issued, and that whatever right or title had previously passed from the Government has been returned to it. 30-538

452. By relinquishment and reconveyance to the United States of lands within the limits of a forest reserve, and the selection of other lands in lieu thereof, the party making such relinquishment and selection acquires a right to have the selection approved, if there is otherwise no objection thereto, of which he can not be divested by the subsequent elimination from the boundaries of the forest reserve of the lands in lieu of which the selection is made. 30-124

453. By relinquishment and reconveyance to the United States of lands within the limits of a forest reserve, and the due selection of other lands in lieu thereof, the party making such relinquishment and selection acquires a right to have the selection approved, of which he can not be divested by a subsequent order withdrawing the selected lands "from settlement, sale, or disposal," pending a determination "whether or not they shall be permanently reserved for forest purposes." 30-145

454. The relinquishment of lands selected in lieu of lands within a forest reserve on the ground that the lands in the township wherein the selected lands are situated have been suspended from disposal pending an investigation to determine whether the same were mineral in character, will not be accepted where it appears that the investigation has been concluded and the lands found to be of the character and condition subject to such selection. 31-28

455. Where the affidavit as to the character and condition of the land is executed before the selector acting as notary public, such affidavit is void, and the application can therefore have no effect to except the lands covered thereby from a subsequent withdrawal embracing the same made in accordance with section 3 of the act of June 17, 1902. 33-350

456. Lands withdrawn from entry, except under the homestead laws, in accordance with the act of June 17, 1902, are not subject to selection under the act of June 4, 1897. 33-360

457. The fact that land is more valuable for the timber and stone thereon than for agricultural purposes does not bar selection thereof under the act, if not mineral in character. 34-115

458. Lands formerly within the Fort Assiniboine Military Reservation, and opened to entry by act of April 18, 1896, are subject to selection under the act of June 4, 1897. 34-296

459. The provision in the act of July 4, 1884, that the lands in the former Columbia Indian reservation by said act restored to the public domain should be disposed of "to actual settlers under the homestead laws only," is no bar to the selection of portions of said lands in lieu of an unperfected claim to lands in a forest reserve, based upon homestead settlement, and relinquished under the act of June 4, 1897. 34-127

460. Lands embraced in an application to make lieu selection, which had not, at the date of the proclamation of May 22, 1902, establishing the Medicine Bow Forest Reserve, been shown, by proper proofs, to be of the class and character subject to

such selection, do not come within the excepting clause of said proclamation.

32-520

461. The right of lieu selection is expressly restricted to "vacant land open to settlement," and hence can not be allowed where the land applied for is embraced within an existing forest reservation, established by proclamation of the President under section 24, act of March 3, 1891.

29-593

462. The word "vacant" in the act, descriptive of land subject to selection in lieu of land relinquished, is used in its ordinary sense of *unoccupied*, and not in a special sense intended only to describe land "not taken or appropriated of record."

31-288

463. The word "vacant" in the act of June 6, 1900, which declares that only "vacant surveyed nonmineral public lands which are subject to homestead entry" may be selected under the act of June 4, 1897, contemplates not only land which is not occupied, but also land which is not appropriated, not reserved, and for which no claim has been presented under any of the laws providing for disposition of the public domain.

37-669

464. Land actually in use as a public cemetery is not "vacant" within the meaning of the act, and is not subject to selection.

39-383

465. Where a selection is not accompanied by a showing that the land is vacant, no rights are obtained by its presentation, and an affidavit subsequently filed to the effect that the land was vacant at the time of attempted selection can not be given a retroactive operation so as to perfect the selection as of the date of its filing.

31-312

466. A statement in the nonoccupancy affidavit accompanying a lieu selection that the land is "unoccupied by anyone having color of title thereto," is not a proper showing respecting the condition of the land; if occupied at all, the affidavit should state all the facts, so as to enable the Land Department to determine the character and effect of the occupancy.

31-318

467. Proof that land is uninhabited is not the equivalent of proof that it is vacant or unoccupied.

31-220

468. Land actually occupied is not "vacant land open to settlement," within the meaning of the act, and is therefore not subject to appropriation thereunder; and any question as to whether the occupancy is such as meets the requirements of the homestead or other laws, or whether the occupant is qualified to assert and maintain a claim under those laws, will not be tried and determined under an application to select the land under said act.

32-298

469. The charge in an affidavit of contest against a forest lieu selection that the selected land was occupied at the date of selection is not sufficient in the absence of a further charge that such occupancy was adverse to the selector.

40-3

470. The requirement that a forest lieu selection shall be made of unoccupied land is for protection of such legal rights as the occupant himself may have, and he only is entitled to question the selection on the ground that the land was occupied at the time selection thereof was made.

40-3

471. Mere adverse occupancy of land will defeat a forest lieu selection thereof, irrespective of whether the occupant is or is not complaining of such selection, or whether he is entitled to occupy, or whether such occupancy meets the requirements of law or not.

40-231

472. The proof of nonmineral character and nonoccupancy required to support an application to make forest lieu selection can not be completed, where the lands applied for are unsurveyed, until approval of the township plat of survey, unless they are identified in fact; and such proof, when furnished after identification by survey, should relate to present existing conditions as to the nonmineral character of the land, but it is sufficient if the proof of nonoccupancy relate to the date of such identification.

40-284

473. Nonoccupied, nonmineral public lands of the United States are subject to the exchange provisions of the act of June 4, 1897, whether surveyed or unsurveyed; but a selection of unsurveyed lands, which

designates them as what will be, when surveyed, technical subdivisions of specified sections, but which does not identify the selected land in law or in fact, is not such a selection as may be approved by the Commissioner of the General Land Office upon proof of nonoccupancy and nonmineral character. 40-284

474. An application to make forest lieu selection of unsurveyed lands not identified with reference to natural boundaries or monuments or such markings upon the ground as would constitute notice to intending settlers, is no bar to the attachment of rights under the act of May 14, 1880; and while approval of the township plat of survey is an identification of the lands as of the date of such approval, and, by relation, as against the Government, as of the date of the filing of the application, it does not and can not so attach as to cut out intervening adverse settlement claims. 40-284

475. The local officers have the power to reject an application to select, where the lands are not subject to selection because embraced within a pending railroad indemnity selection list. 33-161

476. No rights are acquired by an application under the act to select lands covered by an earlier railroad indemnity selection until the prior selection has been canceled upon the records of the local office. 37-593

477. The Land Department is not bound under the broad principles announced in the decision of the supreme court in the case of *Sjoli v. Dreschel* to allow a selection under the act of June 4, 1897, for land embraced in a prior railroad indemnity selection, merely because at the time of the presentation of such selection the railroad selection had not been approved. 37-669

478. The mere fact that patent was erroneously issued upon a railroad indemnity selection without awaiting the expiration of the period within which an applicant to select the same land under the act of June 4, 1897, was entitled to appeal from the rejection of such application, will not warrant the institution of suit to vacate the patent, where it appears the patentee is entitled to the land, and cancellation of the patent would have to be followed by

the issuance of a new patent to the same patentee. 37-670

479. Pending disposition of a school-land indemnity selection, even though erroneously received, selection of the same land under the exchange provisions of the act should not be allowed. 34-119

480. A pending invalid indemnity school-land selection is a bar to the allowance of an application to select the same land under the act. 33-595

481. An application to select, although irregularly accepted by the local officers while the land was embraced within a pending indemnity school-land selection, is, while pending and of record, a bar to the allowance of a subsequent application for the same land; and upon rejection of the school selection the application may be permitted to stand. 33-233

482. It was not intended by the act to exclude from reservation small tracts, here and there, within the limits of a forest, because of the fact that said tracts were not covered with timber. 29-531

483. Where a person owning lands within a forest reservation executes a relinquishment thereof, and said lands are subsequently excluded from the reservation, while the deed remains in the control of the vendor and unrecorded, the vendor can acquire no rights by then filing the deed for record or causing it to be recorded. 31-252

484. Where the owner of lands covered by a patent executed a relinquishment thereof and recorded the same in the proper county office conformably to existing regulations, while the lands were within a forest reservation, he became entitled to complete the transaction by the selection of lands in lieu of those relinquished, notwithstanding the subsequent exclusion from the reservation and restoration to the public domain of the relinquished lands. 31-175

485. Claims to lands within a forest reserve relinquished with a view to the selection of other lands in lieu thereof, arising not by act or sufferance of the relinquisher, but independently asserted by third parties under the laws and supposed title of the United States, after record of a defectively authenticated deed for the relinquished land, subsequently cured, con-

stitute no bar to consummation of the exchange. 32-283

486. Selections under the act while of record and awaiting consideration bar indemnity selection of the same lands under a railroad grant. 31-151

487. Suit for recovery of title to lands included in an approved and certified school selection, invalid because of insufficient base, can not prevail against a *bona fide* purchaser for value; and, where within a forest reserve, such lands may be assigned by such purchaser as a basis for the selection of lieu lands. 32-379

488. Where the owner of lands within a forest reserve in California executes and acknowledge outside of said State a deed purporting to convey said lands to the United States, with a view to making selection in lieu thereof, he must furnish the certificate of a clerk of a court of record of the county or district where such deed was executed and acknowledged, certifying to the official character, qualification and signature of the officer before whom the acknowledgment was taken. 32-31

489. The recording of a deed purporting to convey lands to the United States, and tender thereof to the Land Department, constitute a mere assertion by the applicant of his title to the land and his right to make selection; and no equitable title to the land relinquished vests in the United States until the title has been examined, approved, and accepted by the Land Department. 32-233

490. Where lands in a forest reserve have been of record conveyed to the United States, with a view to the selection of other lands in lieu thereof, and application to select lieu lands is made but rejected because defective, and a corrected application is subsequently filed, the abstract of title of the relinquished lands must be extended to the date of such subsequent application, so as to show whether or not adverse claims to the land have in the meantime arisen; and if such have arisen they must be removed before selection of lands in lieu of those relinquished will be allowed. 32-233

491. A deed of relinquishment does not operate to vest title in the United States until the title tendered has been examined and accepted; and, until such time, no

action should be taken or permitted by the Government looking to disposal of the relinquished land, or which would in any wise impair or cloud the relinquisher's right or claim of title. 33-589

492. An application to enter land embraced in a relinquishment executed under the act, presented prior to examination and final acceptance of the title tendered, will be rejected, and not merely suspended pending such examination and final action. 33-589

493. Where the owner of lands within a forest reserve makes reconveyance to the United States, with a view to selecting other lands in lieu thereof, no act should be done or permitted by the Government looking toward the disposal of said lands until the title tendered has been accepted and noted on the records of the local office; but where an application for the land, otherwise regular, has been accepted by the local officers prior to such time, it will be treated as attaching immediately upon receipt of notice by the local office that the title tendered has been accepted, and selection of other land in lieu thereof allowed, if there be no other valid adverse claim. 32-41

494. Lands withdrawn with a view to the establishment of a forest reserve are not, prior to executive proclamation creating the reserve, a proper basis for selection; and an application to make selection in lieu of lands so situated will be rejected, and not merely suspended pending final action as to creation of the contemplated reserve. 33-355

495. Where it is disclosed by the abstract of title accompanying a relinquishment, or in any other manner, that adverse claims exist to the lands relinquished, the Land Department can not try the question as to which claimant has the better title or right, and such a controversy must in some manner be terminated before a title from either claimant can be accepted as base for selection of public land under said act. 32-209

496. Defects in or omissions from the abstract of title of the base lands accompanying an application to select, which are cured or supplied by the records of the Land Department, will be disregarded in

passing upon the sufficiency of such application and the showing made in support thereof. 32-315

496. Where, during the period allowed a successful contestant within which to exercise his preference right, he applies to select the land, in the name of and as the attorney in fact for another, under said act, without making an application to enter in his own behalf during such period, he thereby waives his right, and the land becomes subject to entry by the first legal applicant. 32-466

497. A successful contestant in the exercise of his preference right may secure through the owner of lands within a forest reserve who relinquishes the same under the act, a selection of the lands covered by the contested entry, and all rights under such selection will inure to the contestant. 36-41

498. A second or junior contest against a homestead entry is no bar to the selection of the land under the act, upon the filing by the successful senior or first contestant of a relinquishment of his preference right. 33-65

499. Land acquired under a grant made to a State, or railroad company, by act of Congress is a proper basis for lieu selections, provided the full legal title thereto has passed out of the Government and beyond the control of the Land Department by a patent, or some full legal equivalent thereof. 28-328; 29-594

500. The words "tract covered . . . by a patent," as used in the act, embrace a tract to which the full legal title has passed out of the Government and beyond the control of the Land Department by any means which is the full legal equivalent of a patent. 28-284

501. The act, in providing for an exchange of lands included within a forest reservation and "covered by unperfected *bona fide* claims or by patent," contains no provision authorizing the suspension of action thereunder until the survey and examination of the reserved lands provided for in said act, and in the absence of such authority the department is not warranted in thus suspending the execution of said act. 28-312

502. If a selection is in lieu of land covered by a patent, or patent certificate,

the nonmineral affidavit may be made by any credible person having the requisite personal knowledge of the premises. In the case of a selection in lieu of an unperfected claim, the nonmineral affidavit should be made as required in the law under which the claim is held. 29-580

503. A selection in lieu of land embraced within a patent, or patent certificate, may be made by a duly authorized attorney in fact. As to selections in lieu of unperfected claims, the right to act through another depends upon the law under which the claim is held. 29-580

504. Where title to the land relinquished has passed out of the Government, or where certificate for patent thereto has issued, the selection may embrace contiguous or noncontiguous tracts, if in the same land district; but if the land relinquished is covered by an unperfected claim, to which certificate for patent has not issued, and the law under which said claim was initiated requires that land taken thereunder must be in one body, the same requirement must be observed in making the lieu selection. 28-291

505. A relinquishment should not be accepted in the absence of an accompanying application to make selection. 29-575

506. A person relinquishing land with a view to making a selection in lieu thereof under said act, should, at the time of such relinquishment, designate the land which he desires in lieu of that relinquished, and such designation should embrace a tract or tracts equal in area to that relinquished. 29-578

507. A relinquishment under the act should be accompanied by a selection for an equal area; and where the selection is for a less area, the selector should be given opportunity to elect either to amend and fill his selection to equal the area relinquished, or to waive his right to make selection for the excess. 33-352

508. The right of relinquishment is not limited to claims initiated or titles acquired under laws that require personal settlement and residence on the land, but includes any tract covered by any unperfected *bona fide* claim under any of the general land laws (other than the mining laws), or to which the full legal title has passed out of the Government, and beyond

the control of the Land Department, by any means which is the full legal equivalent of a patent. 28-328

509. Before a lieu selection can be approved, the United States must be reinvested with all the right and title to the tract relinquished, with which it had previously parted. 28-284

510. One proposing an exchange of lands under the act must show that he holds both the legal and equitable title, and the abstract submitted by him must connect back to the passing of title from the United States. 33-76

511. An application to select must be rejected where the lands offered as a basis are in any manner encumbered, so that the United States can not, by the acceptance of a relinquishment of the lands offered, be reinvested with all the right and title with which it had previously parted. 30-15

512. Selection can not be allowed where there has been conveyed out of the tract assigned as base a right of way for a pipe and flume line and for a power canal and also the right to enter upon said land "at all times after said pipe and flume line is completed for the purpose of keeping the same in good repair." 33-54

513. An application to select can not be allowed where it is shown by the abstract of title that there is excepted and reserved from the tract assigned as base for the selection a strip of land for railroad purposes and that said base land is encumbered by a perpetual obligation to maintain fences inclosing such strip. 32-315

514. The reservation of a right of way 30 feet in width along each side of all section lines, for a public highway, in all conveyances of swamp lands made by the State of Oregon, does not constitute such an incumbrance upon lands so situated and embraced within a forest reserve as to render them unacceptable as bases for the selection of other lands under said act. 32-15

515. Defined rights of occupancy, in the nature of easements and protected by statutes, which can not be injuriously affected by disposal of the fee of the servient lands, do not exclude such lands from selection under said act. 32-311

516. The fact that a tract of land within a forest reserve is subject to a right of way to construct and maintain a water-pipe line within a narrow strip across the same, segregated from the tract by a survey and clearly defined, will not prevent the acceptance of a relinquishment of the tract and the allowance of a selection of other land, equal to the unincumbered portion. 32-414

517. No right to make selection can arise until legal title exists in the person assuming to convey it to the United States and claiming the right to make selection. 32-100

518. The abstract of title accompanying the relinquishment of lands within a forest reserve as a basis for the selection of lands in lieu thereof, must be accompanied by a certificate from the officer having custody of the tax roll and charged with the collection of taxes that no taxes levied upon the property, or lien thereon, remain unpaid. 32-151

519. An application to select must be accompanied by a certificate from the clerk of the proper court of the county wherein the base lands are located, showing that there are no judgments of record or suits pending affecting the title to said base lands, and also by an affidavit of the applicant that such lands have not been assigned as base for any other application made by him under said act. 32-323

520. The United States will not accept title from one of several claimants to ownership, nor will it accept title only *prima facie* good. 32-642

521. The Land Department will not lend its agency to permit the Government to become receiver of lands as base for forest lieu selection where it has knowledge that title thereto was obtained by fraud. 39-608

522. Where land assigned as base for a lieu selection was secured from the State by use of an application and purchased in the name of a fictitious person, the various instruments effecting the transfer of title from the State to the ultimate owner of the base land resting upon forged and fictitious papers, a selection based thereon must be canceled, whether the selector or subsequent grantee of the base land had knowledge of the fraud or not. 39-426

523. Where the base land was acquired by means of an application and purchase by a real person, but not in his own interest but for the use and benefit of the party acquiring the title to the base land, in violation of the laws of the State regulating the sale of its lands, a selection based thereon should likewise be canceled, where the patentee of the State or his grantee does not occupy the position of a *bona fide* purchaser for value; otherwise it should be patented. 39-426

524. An assignee of a contract to purchase land from the State of California, who acquires title from the State under the contract by patent in due form after full payment, has good title, if he in no way participated in, connived at, or had knowledge of fraud in the purchase from the State; and it is no objection to acceptance of such title as basis for lieu selection that the contract of purchase may have been procured from the State through fraud. 39-76

525. The validity of a forest lieu selection does not depend upon whether the United States acquired a good title to the base land which it can successfully defend as a *bona fide* purchaser, but whether the selection was made in good faith and not by fraudulent practices and in pursuance of unlawful designs; and the department will not, upon petition for certiorari, control the action of the General Land Office in ordering a hearing to determine whether the selector acquired title to the base land by fraudulent means for the purpose of selecting other lands in lieu thereof. 39-64

526. The selection of lands in lieu of other lands within a forest reserve relinquished to the United States with a view to such selection, can only be made by or in behalf of the owner of the lands relinquished; and one claiming to be an innocent purchaser of the selected land or the right of selection will not be recognized as entitled to obtain any right superior to that of the owner of the relinquished land. 39-607

527. Where an exchange of land is sought, the relinquishment and selection can be made only by the claimant or owner of the land within the reservation. 28-234

528. Selection can only be made by or in behalf of the owner of the lands relinquished. 32-578

529. The act contemplates an exchange of lands only with the owner, and where a person joins in the execution and tender of a deed to the United States for a tract of land in a forest reserve, representing that he and those joining with him in such deed are the sole and complete owners of the land, he is thereby estopped, if the title tendered be accepted by the Government, from ever asserting any interest in the land relinquished. 33-460

530. If the owner of lands within a forest reserve, after relinquishing the same with a view to the selection of other lands in lieu thereof die, all subsequent proceedings looking to completion of the transaction should be carried on in the name of such deceased owner, and if the exchange be consummated patent for the lieu lands will issue in his name. 33-461

531. In case of the death of a person who made relinquishment prior to acceptance thereof by the Government, only those upon whom is cast the equitable title remaining in such person at his death can be recognized to make selection and thus complete the transaction initiated by him. 33-458

532. The fact that a successful contestant who in the exercise of his preference right applies to select the land under the act did not have title to the land assigned as base for the selection at the date of the initiation of the contest, furnishes no ground for rejection of the application, it being only necessary that the selector have title to the base land at the time he initiates the proceeding for an exchange under the act by relinquishing it to the United States. 34-376

533. It is essential to a selection under the act that the land intended as a base therefor should be specifically designated. 32-26

534. It is essential to the right to make a selection under the act that title to a proper base should first have been relinquished to the United States. 33-53

535. A relinquishment of a fractional portion of a legal subdivision, will not be accepted unless the fraction is all of the

full regular subdivision that the party then owns. 33-53

536. Title to fractional parts of a Government subdivision may be accepted by the Government where the owner relinquishes all the land in the subdivision to which he has title. 32-121

537. The character of land at the time of its proposed relinquishment, rather than the class of entry under which the United States parted with its title, determines its acceptability under said act. 32-223

538. Land within a forest reserve covered by an Indian allotment may constitute a proper basis for exchange. 32-661

539. The act makes no provision for the issuance of scrip. 28-472

540. The right to select public land in lieu of land relinquished under the act is not assignable. 33-139

541. The right to make selection in lieu of land relinquished under the act is not assignable, but must be exercised by or for the person who owned and relinquished the land upon which the selection is based. 33-458

542. Directions given for the disposition of cases where relinquishments have been presented with selections in partial satisfaction only of the claim relinquished. 29-578

543. A homestead entry of record at the date of the proclamation establishing a forest reservation is effective to except the lands covered thereby from the effect of the proclamation only so long as the entryman continues to comply with the law. On relinquishment of the entry the exception declared in the proclamation ceases to be operative and the lands at once become a part of the reservation. 30-44

544. An application to correct or change a lieu selection should be accompanied by evidence showing whether or not the selector has transferred, assigned, or encumbered the land first selected or contracted so to do, whether any conveyance or instrument affecting or attempting to affect the title to such land, or the selector's right under the selection, is shown upon the records in the county or other office where such records are usually kept, and as to whether, since its selection, such land has undergone any change in charac-

ter or value by the cutting or removal of timber or the removal of any mineral or other thing of value. 31-213

545. The removal of timber, in pursuance of a lawful right, from land acquired under statutory authority, does not deprive the owner of said land or the Government from receiving the benefit incident to an exchange of lands as provided for in said act. 28-328

546. The requirement of posting and publication of notice, under the regulations of December 18, 1899, in the case of a lieu selection under said act, is not applicable to a selection theretofore regularly accepted and approved. 29-533

547. Permission to occupy lands within a forest reserve for church and school purposes under said act, asked for on behalf of a corporation, may be granted to the petitioners as individuals, where it appears that they are settlers residing in the vicinity of said reserve. 28-89

548. Lands which are to be disposed of for the benefit of a tribe of Indians, and only under laws which require a cash payment, are not subject to selection under said act. 32-119

549. The provision of section 10, act of March 3, 1893, that the lands in the Cherokee Outlet "shall be disposed of to actual settlers under the homestead laws only," precludes the allowance of an application to select such lands under the act of June 4, 1897. 30-263

550. Provision having been made by the act of August 15, 1894, for the disposition of the ceded Nez Perce lands under the mining, townsite, and homestead laws only, said lands are not subject to selection under the act of June 4, 1897. 32-374

551. There is no authority for applying the rule of approximation to cases of exchange of lands under the act; but the rule that "a slight difference in the acreage of the tract relinquished and selected will not be deemed an inequality in quantity" may be followed in proper cases. 30-105

552. The rule of approximation may properly be applied in case of an exchange of lands under the act. 31-225

553. Questions involving the validity of a selection are between the Government and the selector, and can not be affected

by any attempted transfer of the selected lands the legal title to which is still in the United States. 33-639

554. A purchaser, prior to patent, of lands selected under the act, acquires no greater estate in the lands than the selector possessed at the time of the purchase. He is charged with knowledge of the state of the title and takes subject to the risk of the consequences of any inquiry or investigation by the Land Department touching the validity of the selection, and, therefore, subject to the right of the Land Department to cancel the selection if found to be fraudulent, or for any other reason invalid. 33-639

555. The action of the President transferring the Crow Creek Forest Reserve to the administrative control of the War Department, to be used for certain military purposes, with the understanding and upon condition that the use thereof for such purposes shall be subordinate to and not interfere with the object for which the forest reserve was established, did not amount to a vacation or abolition of the forest reserve, and lands therein constitute a proper basis for exchange under the provisions of the act of June 4, 1897, if otherwise subject thereto. 35-107

556. Where an occupant of lands within a private-land claim failed to assert his claim by petition to the proper court within the period fixed by section 12, act of March 3, 1891, refused, upon opportunity accorded him for that purpose, to assert his claim as a "small holding claim" under said act, and upon survey of the township failed to assert any settlement right thereto within three months after filing of the township plat, the lands thereupon, notwithstanding his occupancy, became subject to entry by the first legal applicant, and the Government, having patented the land to another, by virtue of a selection under the act of June 4, 1897, is under no duty to the occupant to institute suit for cancellation of the patent, notwithstanding it was inadvertently issued without consideration of a protest against such selection filed by the occupant. 35-93

557. A relinquishment by a desert entryman, accompanied by his application to

select the relinquished land in lieu of other land within a forest reserve deeded by him to the United States, which relinquishment and application are made for the express purpose of completing title by exchange under said act instead of by compliance with the desert-land law, is not absolute in effect, but conditioned upon acceptance of the application to select; and where such application is not allowed, and entries of the relinquished land are permitted to be made by other parties, claimants under such entries will be required to show cause why their entries should not be canceled and the original desert entry reinstated. 32-260

558. Where in making selection of unsurveyed lands a third party is employed to protract the lines of survey over the land, and selection is made according to the description furnished by such party, and it afterwards develops that mistake was made in the description so furnished, the department can not recognize any such mistake as a sufficient ground for amendment of the selection. 32-174

559. The reservation from adverse appropriation of lands within a township for the survey of which application has been made by the governor of the State, with a view to selection thereof by the State, for a period from the date of the filing of the application until the expiration of 60 days from the filing of the township plat of survey, as provided for in the act of August 18, 1894, is conditioned upon publication of the notice provided for in said act, to be begun within 30 days from the date of the filing of the application, and in case of failure to begin such publication within the time limited, the State has no such claim to the land as would bar the allowance of an application to select the same under the act of June 4, 1897. 32-240

560. The provision in the act of January 9, 1903, relating to the procedure by which the owner or settler upon lands within the Wind Cave National Park may relinquish the same and select other lands in lieu thereof, is in no wise affected by repeal of the act of June 4, 1897, and acts amendatory thereof, by the act of March 3, 1905, and the act of 1897 and amenda-

tory acts, although repealed, may be referred to to ascertain the procedure in such cases. 33-592

561. One who settles upon land within the primary limits of the grant to the Northern Pacific after its right thereto has attached, and through ignorance of the law fails to claim the benefit of the act of July 1, 1898, prior to patenting the land to the company, entitled to the land, which is within a forest reserve, thereafter reverts in the United States under the act of June 4, 1897, may be permitted, under the act of April 15, 1902, to carry his claim to completion. 33-367

562. Where at date of the act of March 3, 1905, no selection had been made in lieu of lands within a forest reserve relinquished to the United States the Land Department is without authority to now permit such selection. 34-458

563. In case a selection is canceled for conflict with a prior settlement claim, and another selection for a like quantity of land is made in lieu thereof, under the proviso to the act of March 3, 1905, the abstract of title of the relinquished land assigned as basis for the selection must be extended to the date of the later application. 34-564

564. A selection of, for a less area than embraced in the relinquished land offered as base, not the result of mischance or misprision on the part of the local officers, is a waiver of the excess; and there is nothing in the act of March 3, 1905, authorizing the selector to make a further selection based upon such excess area. 34-578

565. Where prior to repeal of the act of 1897, by the act of March 3, 1905, selection was made and approved for unsurveyed lands described in terms of legal subdivisions, and upon survey some of the subdivisions were shown to be fractional and to contain a less area than contemplated by the selection, the selector may, under the saving provisions of the act of 1905, make additional selection to cover such deficiency. 34-603

566. The proviso to the act of March 3, 1905, repealing the act of June 4, 1897, which declares that a selection made under the latter act prior to the date of the repealing act, may be perfected and

patent issue thereon the same as though the repealing act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid, another selection for a like quantity of land may be made in lieu thereof, applies as well in instances where the selection is held invalid in part only as where the selection is held invalid in its entirety. 35-116

567. Lands covered by the special contracts entered into by the United States and the Santa Fe Pacific Railroad Co., whereby that company conveyed to the Government certain lands within the San Francisco Mountains Forest Reserve as basis for lieu selections under the acts of June 4, 1897, and June 6, 1900, are not subject to the repealing provisions of the act of March 3, 1905, or the restrictions contained in the proviso thereto, but may, in the absence of other objection and upon compliance with the terms and provisions of the contracts, be made the basis for lieu selections. 40-360

RESERVOIR LANDS.

See ARID LAND; RECLAMATION; RESERVATION, 18; RIGHT OF WAY, V; SETTLEMENT, 125-130.

1. Circular of July 22, 1890, under act of June 20, 1890, authorizing restoration of certain lands withdrawn for reservoir purposes. 11-212

2. Instructions of July 14, 1897, under act of March 2, 1897, providing for the disposition of Sugar Loaf reservoir site. 25-15

3. Circular of May 11, 1905, under act of March 3, 1905, restoring to entry certain lands in Minnesota theretofore withdrawn for reservoir purposes. 33-552

4. A tract within a desert entry at the passage of the act of October 2, 1888, is excepted from the general withdrawal declared by said act. 18-350

5. A withdrawal made for reservoir purposes under the arid-land act will be revoked in accordance with section 17, act of March 3, 1891, as to the lands that are finally found not to be required for the purposes of the reservation. 13-92

6. The protection provided for settlement claims by section 17, act of March 3, 1891, as against location of, extends only to lands actually occupied at the date of such location. 14-514

7. A mineral location made after repeal of the act of October 2, 1888, and prior to selection of a reservoir site defeats the selection as to the land in conflict. 15-418

8. Land excepted from operation of the act of October 2, 1888, and subsequently entered under the timber-culture law, is not thereafter subject to a specific withdrawal under said act. 18-350

9. A preemption settlement and filing does not withdraw the land from selection as a reservoir site, but if such selection is not finally approved the preemption claim may be perfected. 17-341

10. The act of October 2, 1888, did not contemplate the impairment of rights acquired prior to its passage through *bona fide* settlement and occupancy, and a preemption settlement and filing made prior to the date of said act may be carried to entry and patent subsequently thereto. 22-520

11. Withdrawal of land for reservoir purposes under the act of October 2, 1888, not defeated by a preemption settlement and filing on the land included therein. 12-438

12. On revocation of withdrawal for reservoir purposes a filing for lands included therein and canceled for conflict therewith may be reinstated. 13-92

13. An entry after the act of October 2, 1888, of land subsequently designated as a reservoir site is invalid, but may be suspended with a view to its ultimate allowance under section 17, act of March 3, 1891, in event the land is not required for reservoir purposes. 18-4; 22-370

14. Entries and filings after the act of October 2, 1888, and prior to the act of August 30, 1890, are at the claimant's risk; and the department can afford no relief if such claims are not protected by section 17, act of March 3, 1891. 18-352

15. Settlement claims valid but for the withdrawal authorized by the act of 1888 are protected by the amendatory acts of August 30, 1890, and March 3, 1891, in so

far as the lands are not actually required for the purposes of said withdrawal. 21-203

16. The act of August 30, 1890, repealed the act of October 2, 1888, in so far as said act operated to create a general withdrawal of lands susceptible of irrigation; hence a homestead entry of lands so released from such withdrawal, made at a time when they are subject to entry, though subsequently included within a reservoir site, may be carried to patent irrespective of the act of March 3, 1891. 26-648

17. A preemption filing made subject to a withdrawal under the arid land act of October 2, 1888, that is awaiting action by Congress, may be suspended until such action is taken. 23-483

18. A mineral entry based on a location made after the withdrawal of the land under the act of October 2, 1888, confers no right; but such entry may be suspended, and if it subsequently appears that the land is not required for reservoir purposes, the entry may pass to patent. 28-172

19. Under the act of March 3, 1891, the Secretary has authority to release from reservation any portion of the lands selected for a reservoir site under the act of October 2, 1888, and the acts amendatory thereof, if it is made to appear that such land is not actually necessary for the purpose for which said reservation was made. 28-194

20. The Secretary is clothed with discretion in the matter of approval of maps of reservoir sites filed under the act of March 3, 1891, and where, in his opinion, approval of the same would be detrimental to the public interests, he may decline to make such approval. 33-646

21. The water reserve lands restored by the act of June 20, 1890, were made subject to "homestead entry only," and are not open to sale under the timber and stone act, or the statutes providing for sale of isolated tracts. 20-153

22. The provisions in the act of March 2, 1889, limiting the disposal of lands within the ceded portion of the Great Sioux Indian Reservation to actual settlers

under the homestead law and the laws relating to townsites, does not reserve said lands from the operation of the act of January 13, 1897, authorizing the use of public lands for reservoir purposes.

31-246

23. The approval of a map of survey of a constructed reservoir, under the act of January 13, 1897, relates back as of the time of the filing thereof; and no further disposition should be made of the lands upon which such reservoir has been constructed, pending final action upon such map, nor after the approval thereof.

31-246

24. The second section of the act of January 13, 1897, relating to the construction of reservoirs for the watering of live stock, vests in the Secretary a discretion as to the amount of land that may be reserved for any such reservoir, limiting the amount to not more than 160 acres; and the regulations issued under said section do not contemplate that there shall be reserved necessarily 160 acres because the reservoir has a capacity which authorizes such reservation, but it was only intended that such reservation should be made as is necessary for the use and maintenance of the reservoir.

32-148

25. Under a reservoir declaratory statement filed in accordance with the act of January 13, 1897, the applicant acquires control only of the land necessary for the use and maintenance of the reservoir, which must be kept unfenced and open to the free use of any person desiring to water animals of any kind.

33-321

26. A permanent easement attaching to public lands by the construction of a reservoir and canals upon a right of way acquired under the act of March 3, 1891, does not, upon acquisition of such irrigation system by the United States for use in connection with a project under the reclamation act, become extinguished by merger in the estate of the Government in such reservoir lands; and entries allowed for lands within and below the flowage contour line of the reservoir as marked upon the township plat, are subject to the right of flowage by storage of waters in the reservoir.

37-6

RESIDENCE.

See ABANDONMENT; SETTLEMENT.

I. Generally.

II. Homestead.

III. Commuted Homestead.

IV. Preemption.

V. Osage Land.

VI. Leave of Absence.

I. Generally.

1. To establish, there must be, concurrent with the act of settlement, an intent to make the land a home to the exclusion of one elsewhere.

4-412:

5-179; 9-340; 11-450; 16-22

2. Established from the moment the settler goes upon the land with the intention of making his home there.

2-161:

4-330; 5-239; 6-121, 258; 8-248

3. Begins with the first act of settlement where followed by actual inhabitation of the land in good faith.

7-410

4. Instructions of August 18, 1911, abolishing constructive residence for first six months after entry.

40-228

5. Credit for residence will not be allowed during the time the land is not subject to entry by the person maintaining the residence.

39-230

6. The law requires that it must be established within a reasonable time after settlement where there is an adverse claim, and what is a reasonable time must depend upon the facts in each case.

25-334

7. The place of one's domicile determines the place of his residence.

4-200, 330

8. A corporation is a resident, subject, or citizen of the State in which it is created and can have no legal residence beyond the boundaries of such State.

33-680

9. A contract by a homesteader through which he secures cultivation of the land by a party who lives on the land with him for such purpose, and is paid for such service out of the crops so raised, is not inconsistent with the maintenance of.

22-298

10. Of a married man held to be where his family resides, in the absence of proof to the contrary. 1-89;

4-394; 7-35; 8-615, 629; 9-546

11. The fact that the wife continues to reside at the former home raises a presumption against the *bona fides* of the residence alleged; but such presumption may be overcome. 6-577

12. The validity of a settler's is not affected by the fact that his wife refuses to live on the land. 17-337; 21-113

13. Failure of the wife to reside on the land until after notice of contest does not impeach the good faith of the claimant where it is apparent that her final removal to the land is in compliance with a previous *bona fide* intention of the claimant to make his home on the land. 11-543; 12-472

14. The land is the entryman's home, if he established residence on it, so long as his family occupy it. 2-82; 3-21; 7-35

15. Only the wife shall be heard to prove change of residence by showing that her husband deserted her. 2-81

16. In determining, by the presence of the "family," children, whether legitimate or otherwise, should be held as members thereof if they remain with the parent and under his care. 9-52

17. Can not be established through the acts of another. 2-146; 11-602

18. Residence must be established by the personal act of the entryman. 33-417

19. An entrywoman can not establish residence through the acts of her husband. 33-417

20. Occupation through a tenant is not the maintenance or establishment of residence requisite under the public-land law. 4-412; 12-57; 17-561

21. Maintained as the employee of another who asserts a possessory right to the land confers no rights under the settlement laws. 10-276

22. As the tenant of another confers no rights under the public-land laws. 3-257

23. Neither acquired nor maintained without inhabitancy of the land, either actual or constructive, to the exclusion of a home elsewhere. 4-301, 412; 6-422; 7-267; 9-175; 10-240, 326, 339, 388

24. Must be acquired in the first instance by actual presence on the land, but

continuous presence thereafter is not essential to the continuity of such residence. 1-63; 7-144; 12-497

25. And presence on land not convertible terms. 7-144; 9-266

26. In acquiring, the former residence of the settler must be abandoned. 5-179

27. Keeping a house in town to which the family return from time to time not in itself proof of bad faith. 3-21

28. Once established, can only be changed when the act and intent of the settler unite to effect such change. 5-6, 179

29. Where sufficiently shown, warrants the conclusion that the land was taken for a permanent home in the absence of evidence to the contrary. 7-127

30. The acts of a settler looking to the establishment of a permanent home on the land may be properly considered in determining the good faith of his. 26-384

31. Not acquired by one who goes upon public land with the fixed intention of leaving the same after colorable compliance with the law. 5-273; 6-25; 8-615

32. Not acquired or maintained by going upon or visiting land for the purpose of complying with the mere letter of the law. 8-248, 285, 331; 16-22; 20-76; 26-165

33. Must be both continuous and personal to justify a claim of good faith. 4-200

34. The quality of, not considered in anticipation of a proposed entry. 4-389

35. Laws requiring improvement and residence not satisfied by occupation for business purposes. 1-456

36. The intent to avoid the requirements of law with respect to, warrants cancellation of the entry as speculative. 18-55

37. A change of circumstances after settlement and before final proof may be such as to render the intention of the settler to leave the land after final proof entirely compatible with good faith. 8-508; 13-74

38. In determining whether the claim of, is made in good faith, the fitness of the land as a place of permanent abode, the period of inhabitancy, and the claimant's relation to the land after final proof may be considered. 11-450

39. Absence immediately following final proof submitted in the presence of an adverse claim indicative of bad faith. 5-449

40. Failure to establish, can not be cured by returning to the land after the submission and rejection of fraudulent final proof. 9-527

41. Credit for, not allowable during a period when the land was not subject to settlement. 1-37, 46, 52; 21-106

42. On land not subject to settlement is ineffective, if abandoned or discontinued before the land becomes subject to settlement and not resumed until after the intervention of an adverse right. 8-584; 17-561

43. Credit for, from the time it actually began may be allowed to one who procures the cancellation of a prior entry covering the land. 4-287; 8-227

44. A successful contestant who prior to September 24, 1910, filed his contest and established residence upon the land embraced in the contested entry and has since maintained such residence, is entitled to credit for the time he resided upon the land before cancellation of the contested entry. 40-236

45. On land while it is covered by the entry of another does not secure any right against a contestant who institutes proceedings to secure the cancellation of said entry. 19-175

46. The right of a contestant to settle on the land involved dates from the time his right of entry is recognized, and his failure to reside on said land prior to such time can not be set up by an intervening applicant. 18-504

47. Where a successful contestant, in a suit involving priority of settlement, makes entry and is granted a leave of absence, a stranger is not entitled to be heard on an allegation that involves the entryman's residence on the land during the pendency of the former contest. 29-222

48. Failure in residence not excused by bringing suit in the courts for possession. 3-370

49. Proceedings in the local courts admitted to disprove the charge of abandonment. 4-502

50. Upon land entered through fraud does not validate the claim. 3-299

51. Cultivation and improvement not the equivalent of. 5-351; 6-27

52. The cultivation of crops from year to year and the presence of valuable improvements are an indication of good faith in the claim of residence. 7-231; 9-146

53. Holding office and voting in another county will defeat the claim of residence. 4-62

54. Want of, inferred from meager improvements and voting in a different precinct. 7-143

55. Voting in a different precinct from that in which the land is situated does not raise a conclusive presumption against the claim of residence thereon. 8-353; 9-139

56. A declaration of, at a specified place, for the purpose of voting there, precludes a subsequent claim of residence, at the same time, at another place. 17-176

57. Registering and voting for several successive years in a precinct in which the land is not situated, on an oath as to actual, in such precinct, raises a conclusive presumption against a claim of, for the same period on the land. 24-426

58. One who retains, at his former home for the purpose of voting and holding office there is precluded thereby from claiming residence on his land during such period. 18-546

59. Mistaken location of house outside the claim will not defeat the good faith of the residence. 9-175

60. A settler who by mistake erects his house outside the boundaries of his claim, but on discovery of such mistake removes to and lives on his claim, is constructively a resident thereon from the first. 16-248

61. A settler who by mistake erects his house outside the boundaries of his claim and resides therein, but subsequently removes to the claim on discovery of the mistake, does not necessarily manifest a want of good faith in continuing to use the buildings erected on the adjacent land. 13-7

62. In good faith in a house supposed to be on the land claimed is constructive residence upon the land. 1-439; 2-46; 10-83; 12-67; 14-147; 21-52

63. Dwelling house may be partly on land not claimed and not defeat the claim of residence. 3-321; 4-62

64. That the land on which the improvements are situated is included within the inclosure of another does not necessarily impeach the good faith of the claimant. 17-129

65. May be maintained in the upper story of a building erected for other purposes. 3-562

66. A claim based upon settlement and improvement, with residence upon a contiguous tract, relates back to the date when residence is established on said contiguous tract. 16-12

67. Can not be maintained for separate tracts and under different laws at the same time. 2-622; 3-506;

4-26, 462; 6-792; 7-225; 9-63

68. One who purchases land from a State by virtue of his residence thereon is precluded from claiming residence on public land during the period covered by his proof under the State law. 11-164

69. Being an essential in both, precludes the assertion of a homestead and preemption claim at the same time. 5-403; 6-831

70. Of husband and wife while they live together as such is the same, and the home of the wife is presumptively with her husband. 10-30; 11-22; 18-116

71. Can be legally maintained by a married woman while not living with her husband. 14-241

72. A married woman, in the absence of legal cause for separation from her husband, is not free to select or maintain a separate residence, and is therefore disqualified to make homestead entry. 30-9

73. Separate, can not be maintained at the same time by husband and wife living together in such relation in a house built across the line between two settlement claims, so that each can secure a claim thereby. 9-426; 10-266

74. Separate, can not at the same time be maintained by husband and wife in a house built across the line between two settlement claims. In such a case the claimants may elect which tract they will retain. 11-207

75. By husband and wife in a house built across the dividing line between two claims will not secure a right of entry to each; and where one of such parties has received final certificate the claim of the other must be canceled. 13-734

76. Can not be maintained by a married woman separately from her husband in a house built across the line between two settlement claims. 12-443

77. During the existence of the marital relation can not be maintained by a married woman separately from her husband in a house built across the line between two settlement claims held by each separately, and such residence confers no rights that can be perfected by the heirs of the wife. 12-197

78. A single woman who makes a homestead entry and subsequently marries, and thereafter lives with her husband (who had filed for an adjacent tract) in a house built across the dividing line between the two claims, by such residence abandons her own entry. 17-215

79. Husband and wife can not maintain separate, at the same time, and so secure title to two tracts. 15-377; 21-430

80. Where a woman having an unperfected homestead entry marries a man having a similar entry, and thereupon abandons her claim and resides with her husband upon his claim until he offers final proof, and they then establish residence upon her claim, long prior to the initiation of a contest against the same, she thereby cures her default in the matter of residence and is entitled to perfect her entry. 33-335

81. The legal residence of a wife is presumed to be that of her husband, and where both husband and wife at the time of marriage have an unperfected homestead entry, they can not thereafter maintain separate residences upon and perfect both entries; but where at the time of marriage the wife only has an unperfected homestead entry, and thereafter continues to reside thereon and otherwise comply with law, she is entitled to perfect the entry, notwithstanding her husband in the meantime is maintaining a separate residence upon his own patented homestead entry to which he had perfected title prior to their marriage. 39-593

82. Nature of claim or relations of parties to the land not affected by the act of June 4, 1880. 1-434

83. Absence in winter months excused when the altitude of the land is such as

to prevent residence throughout the entire year. 6-811; 7-57; 9-456

84. Climatic reason for failure to reside not accepted in the absence of good faith. 3-533; 4-348, 393

85. Not acquired nor maintained by occasional visits to the land. 2-74,

144, 152, 159; 3-533; 4-141, 235, 301, 308, 349, 413; 10-472; 11-284, 469

86. Temporary absences on account of exceptional circumstances may be excused, but such absences should be the exception and not the rule. 11-422

87. The facts which will excuse absence must be such as rendered it compulsory. 2-152

88. When once acquired, temporary absences that indicate no intention of abandonment may be excused. 3-110,

545, 564; 4-56, 62, 80, 167, 200, 260; 7-249, 345; 8-60; 9-266; 18-156; 19-210; 28-485

89. After establishment of, temporary absences not inconsistent with an honest intention to comply with the law are accounted as constructive. 6-566, 606

90. There can be no constructive residence where actual *bona fide* residence has never been established. 35-522

91. Where the absences aggregated more than six months, but were not over four months at any one time, and where good faith in cultivation and improvement is shown, the entry may stand. 2-155

92. Where an excuse for absence is offered, such as poverty and sickness, and the evidence shows a mere pretense of settlement, without cultivation, improvement, or establishment of a residence, it will not avail the claimant. 2-142

93. Temporary absences occasioned by ill health do not interrupt the continuity of. 5-215; 8-353; 9-146; 28-503

94. The plea of ill health can not be received as an excuse for failure to maintain residence and make substantial improvements, unless good faith is shown and it is clearly apparent that such failure is due to the causes alleged. 22-140

95. The physical condition and poverty of a claimant may be taken into consideration, where good faith is apparent, in determining whether there has been substantial compliance with the homestead law. 22-422

96. Temporary absences occasioned by the homesteader's physical incapacity to personally improve and cultivate the land do not impeach the good faith of his residence. 22-537

97. After the establishment of, in good faith, temporary absences will not be held to show abandonment, but in such case claimant must evince by his acts an honest continuing intention to maintain a permanent residence, and make the land a home to the exclusion of one elsewhere. 22-619; 25-147; 26-210; 28-485

98. Absence is excused where the entryman shows the illness of his wife and the necessity of taking her away for treatment, together with improvement and cultivation. 2-156

99. When once established, absences rendered necessary by the sickness of a parent may be excused. 7-170

100. Continuity of, not broken by a temporary absence occasioned by the fatal illness of a friend. 10-526

101. Continuity of, not broken by temporary absences made necessary by the poverty of the claimant. 2-149;

6-154, 170; 9-150; 10-182; 12-102; 13-42, 113; 28-503

102. The plea of sickness and poverty can not be received as an excuse for failure to establish, unless good faith is shown and it is apparent the failure is due to the causes alleged. 11-497

103. The excuse of sickness as a reason for failure to establish residence within six months can be accepted only in the absence of a contest or adverse claim and where the entryman has shown entire good faith and established his residence upon the land. 33-248

104. Temporary absences of a homestead entryman from his claim, when necessary to procure a livelihood, may be excused, where it clearly appears that actual residence is being maintained in good faith; but failure to *maintain residence* can not be excused on the ground that the entryman can not make a living on the land. 35-376

105. Absences will not be excused on the plea of poverty where good faith is not apparent. 3-543; 7-467

106. Total want of, not excused by poverty. 4-186, 303

107. The poverty of an entryman may excuse his absence after the establishment of, but does not constitute a sufficient excuse for failure to establish, within the prescribed period, where such default is charged by an intervening contestant.

25-44

108. The serious illness of the entryman's wife can not be accepted as a sufficient excuse for failure to establish residence where such default is charged and proven.

17-540

109. As between a settler whose absence is due to the sickness and necessities of his family and an entryman who is not acting in good faith in the matter of complying with the law, the absence of such settler will not defeat his right as a prior settler on the land.

27-317

110. The poverty of claimant, condition of his family, and severity of climate may be properly considered in determining whether due compliance with the law has been shown.

6-547

111. Absences caused by ill health, insanity, and poverty held excusable and the period covered thereby treated as part of the required period of.

6-311

112. After once secured, "inhabitaney" is not impeached by absences necessary to secure means for improvement of the land and payment of the purchase price.

6-576; 8-645; 17-1, 207

113. Temporary absences for the purpose of earning a living, not inconsistent with an honest intention to comply with the law, may be held constructive.

2-157; 6-245, 566; 8-517, 639; 9-57

114. When once established to the exclusion of a home elsewhere and the improvements indicate good faith, temporary absences on business may be excused.

11-505; 21-167

115. Temporary absences at a season when but little work could be done on the land are not inconsistent with good faith in the matter of inhabitaney.

6-338

116. Absences during the winter for the purpose of earning money to improve the claim may be excused.

7-360

117. Compulsory absence of the homesteader and his family caused by the land being flooded does not interrupt the continuity of, that has been established and maintained in good faith.

12-199

118. Absence of the entryman or his family from the land may be satisfactorily explained where it is obvious that the entry was made in good faith.

6-254

119. Abandonment should not be presumed from temporary absences where the settler's family remains on the land during such periods of absence.

9-52

120. Abandonment not excused because the result of erroneous advice of neighbors; and rights so lost can not be recovered by a return to the land.

4-166

121. The charge against a young woman of failure to establish a residence is not sustained by evidence showing the building of a house (with other improvements), residence in it for two days, and going into service for the purpose of earning money to improve the land.

2-162

122. After the establishment of, absence caused by official duties will not work a forfeiture of the settler's rights.

2-74,

110, 147; 3-6; 6-307,

668; 7-88; 8-85; 9-525

123. Instructions of February 16, 1909, relative to constructive residence during official employment.

37-449

124. Even under the more liberal rule which obtained prior to the instructions of February 16, 1909, with respect to the recognition of absences on account of official employment as constructive residence, absence due to employment under contract to carry the mail is not entitled to be so recognized.

40-87

125. A preemptor who has established, in good faith, does not forfeit his rights thereunder by a temporary absence in the discharge of official duties; nor is the right of transmutation during such absence affected thereby.

17-195

126. The rule that recognizes official duty as an excuse for temporary absence is equally applicable whether the duty is imposed by the appointing power or by election. (See 37-449.)

17-195

127. If not first acquired in good faith, later absence can not be excused on the ground of official duties.

9-523; 37-437

128. If the duties of an office are not inconsistent with presence on the land, they can not be accepted as an excuse for absence therefrom.

9-546

129. Engagement in public service will not be construed into an abandonment of,

so long as such efforts are made to maintain improvements as manifest good faith.

21-155

130. Failure of an entryman to reside upon his claim, necessitated by employment in the public service, will not be construed an abandonment thereof, where he in good faith established and maintained residence prior to engaging in such service and has continued to comply with the requirements of the law in the matters of cultivation and improvement; but such employment will not relieve from the necessity of establishing residence nor excuse the entryman's failure in that respect.

34-396

131. Credit for constructive residence during absence on account of official employment can not be allowed where actual residence has never in good faith been established.

38-563

132. Official employment can not be accepted as an excuse for the want of, where the entry is made with a full knowledge that such employment will prevent inhabitaney of the land.

11-280

133. Of a postmaster presumed to be within the delivery of his office. (See 29-59.)

5-155

134. In the case of a homesteader who holds an appointment as postmaster, the department will not, in passing upon his compliance with law in the matter of, undertake to determine whether such residence is compatible with the statutory requirement that "every postmaster shall reside within the delivery of the office to which he is appointed."

29-59

135. The rule that a postmaster will not be heard to claim, outside of the delivery of his office, is not applicable where it appears that such officer's resignation has been received by the Post Office Department prior to the date of his settlement.

23-480

136. In determining whether the, by a homesteader who holds the office of postmaster, is in compliance with law, the department will not hold that land sufficiently near the post office to allow the postmaster to reside thereon and attend to his official duties is not within the del-

ivery of said office as contemplated by the statute.

22-248

137. After residence has in good faith been established, absence due to employment as assistant postmaster in a fourth-class post office, under an appointment made prior to April 1, 1909, will be regarded as constructive residence, where it is shown that the business of the office required the services of an assistant and the duties incident to such employment were actually and continuously performed by the entryman and that his absence from the claim was due to such employment.

38-55

138. Of a public official presumptively consistent with the law creating the office.

5-282

139. Total want of, not excused by election to a public office.

1-95

140. An official required to reside personally in a town may properly leave it for a time and establish a good residence on public land where he intends to remove his family and remain with them from time to time.

2-161

141. The fact that a homestead entryman holds an official position the duties of which are required to be performed at some place other than on the land embraced in his entry, constitutes no sufficient excuse for his absence from the claim, unless it be shown that his absence is actually due to his official position or employment.

34-30

142. Absence from the land excusable when in obedience to a judicial order.

13-214

143. A plea of "judicial restraint" will not be accepted as a sufficient defense to a charge of noncompliance with the law in the matter of, and cultivation, if the homesteader had not established residence and otherwise complied with the law prior to the time when he was placed under such restraint.

26-416

144. If once established, the continuity thereof is not broken by absence caused by judicial restraint.

5-6;

7-532; 10-551; 15-550, 554

145. Continuity of, not broken by forcible ouster from the land and subsequent compulsory absence therefrom.

4-335;

8-593; 19-178

146. Failure to establish and maintain, when occasioned by duress, can not be construed as abandonment. 2-152, 572, 602; 4-378; 6-616; 26-616; 27-438

147. Failure to establish, will not be excused on the plea of duress when a part of the land was at date of entry and thereafter free from adverse claims. 9-22

148. Where partly prevented by the force and violence of occupying claimant, held sufficient. 3-368

149. Failure to establish will not be excused on the plea of intimidation, if the alleged threats did not lead the claimant to believe that he was in bodily danger. 22-280

150. Failure to maintain, may be excused where by intimidation and armed violence the settler is driven from the land and by such means prevented from returning thereto. 12-562

151. Not incumbent upon a settler who has been wrongfully ejected from his land to make a new settlement on that part of the claim not in dispute, pending judicial proceedings to recover possession. 8-593

152. An entryman is entitled to the exclusive possession of the land embraced in his entry, and where he in good faith builds a house upon the land with a view to establishing residence and complying with the law, but is prevented by the threats of a rival claimant from establishing residence upon the particular portion of the land selected by him for that purpose, it is not incumbent upon him to establish his residence upon another portion of the land, and he will not be held in default for failure to do so. 34-348

153. An adverse claimant will not be allowed to take advantage of his own wrongful acts in preventing the entryman from maintaining a continuous residence. 20-183

154. Threats of violence and an unfavorable decision of the local office accepted as excusing want of. 1-43

155. Threats and other acts of intimidation by a violent man may excuse failure to maintain a residence which has already been established in good faith. 2-602

156. Building and occupation (peaceable) of a house by a young man within 25 feet of a house built by a young woman

during her absence, both houses being built near a spring, are not in themselves acts of intimidation. 2-630

157. Where one can show that he was guided by an unrevoked though erroneous decision of the General Land Office in not establishing a residence, he is protected. 2-154

158. Want of, excused in case of continued suspension of plat. 4-333

159. The suspension of an entry, during the pendency of an investigation ordered to determine the alleged right of a prior occupant, relieves the entryman from the maintenance of, during the period of suspension. 22-692

160. During suspension of the township plat a temporary absence from the land prior to final proof, but after full compliance with law in the matter of residence, will not affect the right of a settler. 12-633

161. And occupation is notice of the settler's claim which others are bound to recognize. 4-308

162. On public land, with no intention of acquiring title thereto under the settlement laws, confers no right as against the subsequent entry of such land by another. 18-187

163. No rights on public land, as against adverse claimants, are secured by, where no steps are taken within the proper time to protect the alleged settlement right. 11-300; 13-225; 20-550

164. On lands within the former Crow Reservation after April 17, 1885, and prior to the proclamation under the act of March 2, 1889, is a trespass, and no credit therefor can be given under an entry allowed by said act. 13-657

II. Homestead.

165. Absence from land on account of military or naval service during time of war excused; act of June 16, 1898, and circular thereunder. 27-146

166. Residence under the homestead law begins from date of entry. 1-94; 3-506; 4-462; 5-406

167. Not required prior to the allowance of application to enter. 10-510; 12-324; 13-154; 14-554; 20-295; 23-475; 26-219, 588

168. Homesteader can not delay establishment of, until the allowance of his application to enter if he claims priority of right by virtue of an alleged settlement.

16-199; 19-547; 21-97; 22-633

169. A contestant who claims the right of entry on the ground of priority of settlement must show compliance with the settlement laws and the establishment and maintenance of, in good faith.

22-280, 310; 23-87; 26-341; 28-169

170. Need not be established where entry was made pending the right of appeal by a former entryman until disposition of said appeal, which was taken before residence was required. (See 14-429)

6-688

171. A homestead entryman is not in default in the matters of, and improvements where the land is covered by the prior uncanceled homestead entry of another who is in possession.

20-295

172. After a period of five years the entryman is not required to show further inhabitaney.

6-143

173. The law does not require, of a homesteader after the submission of final proof, if such proof upon examination is found satisfactory.

29-16

174. An applicant for the right of homestead entry who has continuously resided on the land embraced within his application for a period of five years, and applied to enter during said period, is not thereafter required to maintain, as a prerequisite to patent.

24-343

175. The failure of a settler to reside on his land, after the submission of final proof, can not be construed as an abandonment of the land if his final proof is found sufficient.

18-504

176. Required under the homestead and preemption laws does not differ in quality, only in the length of time prescribed therefore.

15-574

177. Must be established under homestead entry within six months from date thereof, and failure in this requirement is considered a defect requiring explanation.

8-566

178. Failure to establish, is not abandonment where the entryman dies prior to the expiration of six months from the date of entry and the heir subsequently cultivates the land.

14-141

179. Abandonment not presumed from absences following entry when a period of residence longer than that required by law had preceded the entry.

5-238

180. Leaving homestead under erroneous information, but returning thereto prior to inception of adverse right, does not constitute abandonment.

3-223

181. Effect of abandonment not overcome by returning to the land in the presence of an intervening adverse right.

9-546

182. Failure of a homesteader to establish, can not be excused on the ground that it was due to his arrest under a criminal charge and subsequent sentence thereunder.

12-239

183. Homesteader is excused from establishing, where the township plat is suspended for the settlement of a private claim.

15-215

184. Failure to establish, within six months from entry not cured by the value of the improvements where a contest is brought on the ground of such default.

11-602

185. The rule which allows a homesteader, who makes entry under section 2290, R. S., six months within which to establish, is not applicable to an entry under section 2294, R. S., which is dependent upon antecedent settlement and residence.

18-540

186. The law requires a homestead settler to commence residence on the land within six months from date of the entry; but the act of March 3, 1881, authorizes the commissioner to extend this period for six months where climatic reasons have prevented the residence.

2-145; 3-462

187. Under the act of March 3, 1881, the commissioner may, in his discretion, allow a homestead entryman 12 months from the date of his entry within which to commence residence, where it is satisfactorily shown that on account of climatic conditions it is impossible to commence residence within six months; but in such case the entryman may be credited with constructive residence for a period of six months only, and actual residence for the remainder of the statutory period of five years must be made and shown as in ordinary homestead cases.

35-317

188. An extension of time beyond the six-month period accorded by statute within which to establish residence upon a homestead claim will not be allowed on the ground of climatic conditions, unless it appear that the same conditions also prevailed and prevented the establishment of residence during that period. 35-356

189. There is no provision of law authorizing an extension of the time fixed for the establishment of residence by homestead entryman on account of sickness or ill health, and failure to commence residence within the statutory period can not be excused on that ground in the face of a contest charging such failure, where the default was not cured prior to initiation and notice of the contest. 35-373

190. Instructions of February 10, 1910, under act of January 28, 1910, extending time within which to establish residence in certain cases. 38-451

191. Instructions of February 21, 1911, under act of February 13, 1911, extending the time for certain homesteaders to establish residence. 39-506

192. The act of February 13, 1911, granting certain homestead entrymen "until" May 15, 1911, within which to establish residence, gives such entrymen the whole of said day in which to begin residence; and a contest filed on that day, charging abandonment, is premature. 40-547

193. The act of February 13, 1911, merely extends the time within which certain homestead entrymen are required by law to establish residence until May 15, 1911; and where residence is not established on or before May 15, on an entry within the act made more than six months prior to that date, such entry is subject to contest for abandonment immediately thereafter. 40-590

194. A homestead entryman within the provisions of the joint resolution of February 2, 1907, who establishes residence within the extended period fixed thereby, although after the expiration of six months from the date of entry, is entitled, on commutation of his entry, to credit for constructive residence for a period of six months. 39-9

195. Failure to establish, within six months from date of entry fatal in the presence of an intervening right. 9-523

196. Failure to commence, held to be excused by climatic and other reasons beyond the settler's control. 3-48

197. If alleged in the presence of an adverse claim, before required by the statute, it must be shown in good faith. 5-440

198. Essential requirement of homestead law dependent upon actual inhabitation of the land to the exclusion of a home elsewhere. 1-78; 2-143;

8-576, 584; 10-79, 211, 294; 16-378

199. The homestead law contemplates that an entryman shall make the land his permanent home to the exclusion of a home elsewhere; and an entry of land merely for the purpose of making it a summer home, while maintaining and occupying a home elsewhere the remainder of the time, is not within contemplation of the law. 36-166

200. Cultivation and improvements without, do not constitute compliance with the homestead law. 6-788; 10-346

201. Cultivation of the homestead, with temporary sojourns on it, but with actual residence on an adjoining tract, is not a compliance with the law. 2-143

202. Upon a tract held by a possessory right of the claimant, adjacent to and included within the inclosure of the homestead claim, will not support an entry under the homestead law. 10-130

203. Under the homestead law is not affected by the fact that the entryman's house was on a part of the land subsequently adjudged mineral and excluded from the entry. 14-489

204. The cancellation of a homestead entry, on account of an adverse right as to the particular tract on which the entryman actually lived, does not affect the sufficiency of his, as to the remainder of the tracts, if his entry was made in good faith, and embraced contiguous subdivisions open to appropriation at such time, as shown by the records of the local office. 29-721

205. It is no evidence of bad faith that the house of the homesteader is built across the line between two claims. 10-88

206. Can not be maintained separately by husband and wife at same time living as one family in the same house, so that each may perfect an entry under the homestead law. 9-426

207. Alleged under the homestead law not consistent with the maintenance at the same time in another State of the residence required as prerequisite to citizenship under the naturalization laws. 7-58

208. A homesteader who takes title to the tract on which his house is situated by scrip location and removes to another part of the original claim can not be credited for residence on the first tract. 8-547

209. A homesteader may receive credit for, during a period while the land was covered by a prior entry under which no right was asserted and which was subsequently canceled. 10-276

210. Credit for, while the land was held under his previous timber-culture entry may be allowed a homesteader in the absence of an intervening claim. 6-512; 8-46, 192

211. One who relinquishes a part of the land covered by a filing and makes homestead entry of the remainder, together with another tract, is not entitled to claim residence on the latter except from the date of entry. 12-645

212. One who relinquishes for a valuable consideration a preemption claim is not thereafter entitled to credit for residence under said claim on a subsequent homestead entry of the same land. 13-323

213. Credit for, under a homestead not allowed for a period during which the settler held the land under a preemption claim that was subsequently perfected and the tract in question eliminated therefrom. 16-140

214. Credit for, not allowed before the entryman is a qualified settler under the public-land laws. 1-36

215. Good faith is shown by making a home on the land and improvements thereon. 1-63

216. Want of, not excused on the plea that the land required irrigation. 5-297

217. No one but the wife during the life of the entry may allege "desertion" in proof of abandonment. 8-626

218. Failure to maintain, not excused by the institution of judicial proceedings against an adverse occupant to recover possession. 9-22

219. A homesteader who makes entry with knowledge of an existing adverse

settlement claim asserted for a portion of the land must establish residence on some part of the entered tract in order to show due compliance with law. 9-22

220. The adverse occupancy of another as to part of the land covered by a homestead entry will not excuse the entryman from the maintenance of residence during the pendency of contest proceedings over the land in conflict. 9-22

221. One who alleges priority of settlement, as against an adverse applicant for the right of entry, must comply with the law in the matter of settlement and maintenance of, during the pendency of such controversy. 28-266

222. During the pendency of a contest, in which each party alleges priority of settlement, both are bound to comply with the law and maintain, upon the land. 28-480

223. If an entryman fails to maintain residence during the pendency of a contest involving priority of settlement, his laches can not be cured by the resumption of, prior to the institution of proceedings by the adverse settler charging said default. 29-54, 203

224. Where one claiming to be a prior settler institutes proceedings against an entry made subsequent to his alleged settlement, he must reside upon the land during the pendency of the controversy; and should he fail to do so, the entryman, if he in the meantime continues residence thereon, will have the superior right. 38-275

225. A homesteader who makes entry subject to a prior adverse soldier's declaratory statement of record, is not excused, on account of the existing adverse claim under the soldier's filing, from establishing, within six months from date of entry. 28-337

226. Under the departmental construction of section 2297, R. S., a homestead entryman has six months from date of entry within which to establish actual, on the land. 24-522

227. Establishment of, within six months from entry not a statutory requirement, but a rule based on the provision in section 2297, R. S., authorizing cancellation on proof of change of residence or abandonment for more than six months. 6-567

228. The allowance of six months from the date of entry for the establishment of, is a privilege authorized under section 2297, R. S., and protects the entry from the inference of abandonment during said period, but there is no authority for excusing default in the matter of residence after the expiration of said period, and in the presence of an adverse claim. 27-131

229. An absence to procure a support for the family, though covering several years, is not abandonment if the family lives on the land in the meantime. 8-626

230. Required under the homestead law allows credit for military service. 14-507

231. Actual service of soldier in the United States Army equivalent to residence under the provisions of section 2308, R. S. 1-362

232. Under existing legislation enlistment in the military service in the War with Spain will not excuse homestead claimants from complying with the law. 26-672

233. One who enlisted and served 90 days during the Philippine insurrection and after the suppression thereof made a homestead entry is entitled under the act of March 1, 1901, to credit, in lieu of residence, to the period of his service prior to the date the insurrection came to an end, but is not entitled to credit for such part of his enlistment as extended beyond the close of the insurrection. (See 3S-148.) 37-693

234. Under sections 2304 and 2305, R. S., as amended by the act of March 1, 1901, the military service of a soldier may be accepted in lieu of an equal period of residence only in case the soldier shall have served for 90 days in the Army of the United States during the War of the Rebellion, the War with Spain, or during the suppression of the insurrection in the Philippines. 33-277

235. Service in the Regular Army since the close of the Rebellion not equivalent to. 1-98; 14-472

236. In the computation of the time that may be deducted, under section 2305, R. S., from the period of, required of a homesteader, it is only the time actually served that can be credited to the entryman, unless he was discharged for wounds re-

ceived or disability incurred in the line of duty. 5-630; 26-150

237. Length of service, not term of enlistment, determines the amount of time to be deducted from period of, if the soldier was discharged on account of disability existing before enlistment. 5-674

238. A homestead entryman who enlisted for a fixed term during a time of war is entitled to credit for constructive residence during his absence occasioned thereby, notwithstanding the war may terminate prior to the expiration of the term of enlistment. 36-294

239. In computing military service in lieu of, credit should not be allowed twice for a period covered by two enlistments. 8-227

240. One who makes a second entry under section 2, act of March 2, 1889, is entitled to credit for military service, though allowed therefor under his former entry. 14-604

241. A homesteader in making proof under a second entry allowed in accordance with section 2, act of March 2, 1889, is entitled to credit for such portion of his military service as was not applied to his first entry. 15-241

242. Military service not construed as, during the time of such service when no residence has been established. 6-788

243. The default of a homestead entryman in the matter of, is not cured, under the act of June 16, 1898, by enlistment in the military or naval service in time of war. 31-169

244. Entryman is entitled to six months from entry within which to establish, and where prior to expiration of such time he enlists in the military service he is within the act of June 16, 1898, and contest against his entry will not lie during the continuance of such service. 32-251

245. Upon a soldiers' entry the claimant is entitled to credit for the full period of enlistment where his resignation as an officer is accepted on a surgeon's certificate of disability. 10-622

246. Must be shown to cover a period not included within military service. 11-368

247. And cultivation must be shown for not less than one year in case of entry-

man who has credit for four years' military service. 3-582

248. The act of June 16, 1898, specifically provides that "no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements," and credit for military service can not be allowed as a substitute for such period of residence. 35-553

249. One who is qualified to make a homestead entry under section 2304, R. S., by reason of having served 90 days in the Army, Navy, or Marine Corps, is entitled to credit under section 2305, in lieu of residence, to the full period of his service, provided he has resided upon, cultivated, and improved his homestead for at least one year. 38-148

250. Not required of the heirs, widow, or devisee of a deceased homesteader, but cultivation of the land must be shown for the statutory period. 1-636;

2-74; 4-433; 7-309; 9-31;

12-562; 13-228; 16-375; 23-158

251. Not required under an entry made by guardian for the benefit of the minor orphan child of a deceased soldier. 10-528

252. Under a homestead entry made by the heirs of a successful contestant in accordance with the act of July 26, 1892, actual residence is not required, if cultivation is shown for the requisite period. (See 36-26.) 25-281

253. The widow of a soldier or sailor, who makes entry under section 2307, R. S., must identify herself with the tract claimed by some personal act of settlement, but need not reside on the land. (See 32-331.) 22-351

254. The widow or minor orphan children of a soldier or sailor, making homestead entry under section 2307, R. S., must comply with the law as to residence and cultivation to the same extent as a soldier or sailor making entry under section 2304. 32-331

255. Instructions of July 7, 1904, under Anna Bowes case, relative to residence on a homestead taken under section 2307, R. S. 33-84

256. While the widow of a soldier who made homestead entry for 160 acres is entitled to have the period of his military service deducted from the required five-year period of residence in proving up *his* claim, she is not entitled to credit for such service in proving up a homestead entry made in her own personal right. 40-350

257. Widow can not, under entry in her own right, claim for, during the lifetime of her husband. 1-36

258. A deserted wife who secures cancellation of her husband's homestead entry, and, as the head of a family, makes entry of the land, is entitled to credit for her residence on the land prior to her husband's desertion. 24-557

259. The matter of residence on adjoining farm is not modified by the act of May 14, 1880. 5-172

260. Credited under the act of May 14, 1880, in case of adjoining farm entry, from date of settlement. (See 13-713.) 7-33

261. On the original farm prior to adjoining farm entry can not be computed as forming part of the period required under the latter entry. 1-68; 10-488;

13-713; 14-268; 15-572; 27-348

262. The act of May 14, 1880, does not waive any requirement as to an adjoining farm entry, but allows credit for, on the land embraced therein prior to the entry thereof. 13-713

263. Where an entryman who has made an adjoining farm entry dies more than six months after entry without having established, on the original farm, his widow may cure said default by the establishment of, prior to the initiation of any adverse claim. 25-296

264. On the original farm essential to the right to make adjoining farm entry. 10-579

265. Adjoining farm entry can not be made without residence upon original tract or under new entry. 3-394

266. Period of, abridged by section 2305, R. S., but the quality of, is unchanged thereby. 5-205

267. Of one year required in case of additional entry under the act of March 3, 1879. 1-100

268. Must be established and maintained under additional entry where the original was purchased under the act of June 15, 1880. 1-29

269. On the land entered, is required in case of an additional entry under section 6, act of March 2, 1889. 29-217

270. Is an essential part of the compliance with the homestead law required by the act of March 3, 1883 (Alabama). 14-268

III. Commuted Homestead.

271. A proper element to be considered in commutation proof. 4-347, 384, 478

272. Proof of, required as under the preemption law. 5-676

273. In case of commutation should be computed from date of settlement. 5-94

274. In commutation constructive residence from date of entry will be recognized where settlement is made and residence established within six months thereafter. 31-159

275. To entitle a commuting entryman to credit for constructive residence from the date of entry it must be shown, not only that he established residence within six months, but that his actual presence on the land was thereafter substantially continuous to the date of final proof. 35-252

276. Credit for constructive residence during official employment will not be allowed in the commutation of homestead entries. 37-434, 437

277. Commutation may be allowed only upon a showing of actual and substantially continuous presence upon the land for the required period. 37-434

278. Commutation is allowed only upon a showing of substantially continuous personal presence upon the land for a period of 14 months next preceding submission of proof; and residence prior to a period of absence under leave of absence granted the entryman can not be added to residence subsequent to that period to make up the necessary 14 months. (See 39-360.) 39-72

279. Two periods of *bona fide* residence, separated by a leave of absence regularly procured, without fraud, may be added to-

gether to make up the necessary 14 months as a basis for commutation. 39-360

280. Want of *bona fide*, in commutation will defeat right acquired by original entry. 5-392

281. Want of, not excused on the plea of poverty in case of commutation. 5-448

282. The fact of commutation does not in all cases defeat the plea of poverty when set up as an excuse for absences. 6-170

283. The period of six months' residence required is to secure an assurance of good faith, but exceptions are justified where good faith is apparent and substantial compliance with the regulations appears. 4-287; 6-324, 573

284. A term of six months' residence after entry not essential in commutation. 4-413

285. A period of six months' inhabitancy immediately preceding entry required as a test of good faith, but temporary absences caused by poverty or ill health will not impair such inhabitancy. 8-634, 639

286. Six months' presence on the land for the purpose of carrying out the letter of the departmental requirement, with the intent to discontinue inhabitancy at the end of that period, not accepted. 8-285

287. Period of 14 months required before commutation of adjoining farm entry under section 6, act of March 3, 1891. 15-571

288. The 14 months required of a commuting homesteader by section 2301, R. S., as amended by section 6, act of March 3, 1891, must be computed from the date of the original entry. 16-285

289. Not required after submission of satisfactory commutation proof and tender of payment. 10-555

290. Instructions of August 31, 1907, relative to residence pending action on applications to submit commutation proof. 36-74

291. In the commutation of a soldiers' homestead credit for constructive residence between the date of filing the declaratory statement and the date of entry can not be allowed. 35-523

292. Circular of June 13, 1908, under sections 9 and 10, act of May 29, 1908. 36-514

293. Absence in prison under judicial restraint not considered residence toward making up period of eight months required by section 9, act of May 29, 1908.

36-502

294. The provisions of section 9, act of May 29, 1908, protecting commutation entries where final certificate issued upon proof showing residence for at least eight months within the year immediately preceding the submission of proof, contemplate substantially continuous presence upon the land for an aggregate of eight months during that year.

37-166

295. Absence under leave granted in accordance with the act of March 2, 1889, will not be considered residence toward making up the period of eight months required by section 9 of the act of May 29, 1908.

39-72

IV. Preemption.

296. Not required pending action on application to file declaratory statement.

10-616

297. Must be maintained during pendency of contest.

1-404

298. The rule requiring six months' preceding entry is for the purpose of testing the claimant's good faith, and is not a statutory requirement.

1-493;

5-95; 6-566, 636

299. Period of six months required to show good faith, but where otherwise shown a literal compliance is not necessary.

1-493; 7-3

300. Actual and continuous for six months immediately preceding final proof is not required if good faith is otherwise shown.

9-139

301. There is no rule of law or of the department which requires the preemptor's actual personal presence on the land for six months immediately preceding the offer of proof.

7-62; 10-337

302. The preemptor is required to show six months' continuous residence prior to final proof, but such residence is compatible with temporary absences satisfactorily explained.

7-62

303. A failure to follow up settlement by establishing a residence divests the person of all rights acquired by the settlement.

2-574, 637

304. Should be upon land at the date of making proof.

9-621

305. A preemptor must reside on the tract to date of his entry; where he made homestead entry on February 11 and resided on the homestead until April 1 following date of final proof his application for entry should be rejected.

2-622

306. Must first be established in good faith before excuses for absence will be accepted.

3-107

307. Absence in military service permissible if actual residence has been established.

8-570; 9-489

308. A claimant not necessarily required to abandon his business to acquire title under the preemption law.

3-223; 6-121

309. Using the land as a herding place for cattle while the settler resides elsewhere is not contemplated by the preemption law.

3-87

310. Removal of the dwelling house to an adjoining tract on account of annual inundations prior to final proof, but after a period of four years' residence, not indicative of bad faith.

7-259

311. It is not an act of abandonment for a preemptor who is residing on the half of a quarter section and has a pending contest against an existing entry on the entire quarter to remove to the other half on the cancellation of said entry where he maintains settlement on the whole quarter.

13-366

312. Pretending to occupy a shanty near his employer's claim, without stove or cooking utensils, and for seven months of cold weather occupying the house on his employer's claim, is not legal residence.

2-602

313. One sleeping on his claim in a pen or in the open air and intending to erect a habitable dwelling so soon as his means or occupation permits maintains a satisfactory residence.

2-624

314. Where A left the land and B made settlement and, without cultivating or establishing residence, also left it for three months, during which period A returned and thereafter complied with the law, A's right is superior.

2-625

315. Absence occurring after settlement does not affect the right of the settler if he returns to the land prior to the intervention of any adverse claim and there-

after resides thereon in due compliance with law. 11-307

316. On a tract held under patent can not be extended to adjoining land by occupation and cultivation of the same. 6-356

317. Allowed as a preemptor while the land was covered by the settler's timber-culture entry. 1-58

318. Preemptor allowed further time within the statutory period to make residence and showing thereof. 3-375

319. Credit for, on abandoned preemption claim not allowed on attempted transmutation. 1-485

320. Credit allowed for previous, on transmutation of filing to homestead entry. 1-355

321. Of preemptor available under act of May 14, 1880, on transmutation. 5-118

322. By the heir of preemptor not required in order to perfect the claim of the decedent. 3-345

V. Osage Land.

See INDIAN LANDS, IX.

323. For a period of six months preceding entry not required in entries of Osage lands, but *bona fide* settlement must be shown. 5-309, 581; 6-783

324. Six months' residence prior to final proof not required of purchaser of Osage, but actual settlement must be shown by acts that indicate an intent to take the land for a home to the exclusion of one elsewhere. 12-12

325. Six months' continuous, next preceding final proof not required, but after settlement is made the residence should be continuous until final proof and a home maintained on the land to the exclusion of one elsewhere. 12-290

VI. Leave of Absence.

See CONTEST, 455-459.

326. Leave of absence granted under section 3, act of March 2, 1889. Circular of September 19, 1889. 9-433

327. Leave of absence permissible under the act of March 2, 1889. Circular of March 8, 1889. 8-314

328. The leave of absence accorded by section 3, act of March 2, 1889, does not include settlers who have no claim of record. 27-317

329. If residence is not first established, leave of absence is no protection. 21-428

330. There is no authority for granting leave of absence to an entryman who has never established residence. 36-194

331. Leave of absence under section 3, act of March 2, 1889, can only be allowed on due showing that such absence is made necessary by sickness, failure of crops, or other unavoidable casualty. 11-631

332. Failure of a settler to get water on his land can not be regarded as a "casualty," within the act of March 2, 1889, and is not a proper basis for a leave of absence under section 3 of said act. 80-21

333. The fact that crops can not be produced without irrigation and that there is no present means of supplying the necessary water for irrigation, does not constitute an "unavoidable casualty" within the meaning of section 3, act of March 2, 1889, and does not furnish sufficient ground for leave of absence. 36-152

334. Poverty and inability to earn a living on the land is not a "casualty" that entitles a homesteader to leave of absence under section 3, act of March 2, 1889. 22-716

335. Where entryman was absent, under act of June 4, 1880 (as to loss or failure of crops), he was constructively residing on the land. 1-24, 434; 2-29

336. Application for leave of absence, based on alleged failure of crops, does not operate to extend the time for making final proof. 14-207

337. Failure to apply for leave of absence can not be excused on the ground of claimant's ignorance of the law authorizing such action. 18-156

338. A leave of absence, regularly granted by the local office and not disapproved by the General Land Office, protects the settler while in effect, and his absence thereunder does not afford any ground for a presumption against his good faith. 20-319

339. Where an application for leave of absence is wrongfully denied, and afterwards allowed on appeal, the applicant

will be protected as to any absence during the period covered by the application.

23-200

340. An application for leave of absence will not be granted if it does not affirmatively appear that the applicant has shown good faith in residence and cultivation up to the date of his application.

20-340

341. Section 3, act of March 2, 1889, does not authorize extension of time for the establishment of, but allows a leave of absence in certain cases after settlement.

14-95

342. The affidavits to support an application for leave of absence may be executed before a notary public having jurisdiction to administer oaths within the land district in which the claim is situated.

35-269

343. The action of the local officers approving an application for leave of absence under section 3, act of March 2, 1889, is subject to review by the commissioner of the General Land Office.

35-269

344. The allegation in support of an application for leave of absence that the entrywoman, a school teacher, desires to "attend a term at the State normal school," does not set forth sufficient ground, under section 3, act of March 2, 1889, to warrant the allowance of the application.

35-269

345. When the conditions named in section 3, act of March 2, 1889, are made to appear to the local office, a leave of absence should not be denied for the reason alone that no period of personal presence on the land has intervened between the expiration of a former leave and the application for a second or subsequent leave.

22-706; 23-200

346. A second and third year's leave of absence may be granted upon proper showing therefor, without requiring an intervening period of residence, provided sufficient time remains within which to comply with the law.

33-386

347. A leave of absence is no protection against a contest for abandonment, where the entryman, prior to such leave, has failed to comply with the law.

29-54. 203

348. While a leave of absence protects an entryman from contest on the ground of abandonment during the period covered thereby and for six months thereafter, it

does not cure any default existing prior thereto, and affords no immunity from contest for failure to establish residence within the statutory period, which had elapsed prior to the granting of the application for the leave of absence.

35-353

349. Where a homesteader is granted a leave of absence, the time of his absence shall not be deducted from the period of residence required by law, but he must show full five years' residence exclusive of the time of actual absence under his leave.

30-21

350. The officers of the Land Department have no discretion in the matter of granting leaves of absence to homestead entrymen beyond the authority conferred by statute, and can only allow leaves of absence to those applicants who have met all the requirements imposed by law.

35-253

351. The provisions of section 3, act of March 2, 1889, authorizing leaves of absence, were intended to assist homestead claimants who are making an honest effort to perfect their entries and acquire a home who expect in good faith to return to the land after the expiration of the leave of absence and to continue compliance with the law, and can not be extended to one who has no intention of returning to the land or making any further attempt to carry the entry to completion.

35-253

352. Homestead entrymen who, by reason of the construction of irrigation works under the reclamation act, are deprived of the annual overflow of waters upon which they largely depend for the production of crops, may be granted leaves of absence where, from such cause, they are unable to comply with the law.

36-174

353. Instructions of February 10, 1910, under act of January 28, 1910, granting leave of absence to homesteaders in certain States for three months.

38-451

354. The joint resolution of January 18, 1907, granting a leave of absence to homestead settlers in certain States for a period of three months, protected all entries within its provisions against a charge of abandonment until after the expiration of six months from termination of the period of absence granted.

37-709

355. Instructions of September 8, 1911, under act of August 19, 1911, granting leaves of absence to certain homesteaders.

40-263

RES JUDICATA.

See JURISDICTION.

1. The doctrine necessarily applicable to proceedings before the Land Department to avoid confusion and uncertainty as to finality of action. 4-482; 10-453

2. Doctrine is applicable as between parties litigant with respect to matters once in issue and determined by final decision of the department. 13-366

3. Identity in the thing sued for, in the cause of action in the person and parties, and in the quality of the persons must exist to make the case. 3-199;

4-209, 428; 6-385; 16-404

4. A final determination as to the validity of a claim, in proceedings involving such issue, may be properly adopted in a subsequent case where the same party sets up the same claim. 19-76

5. Final adverse decision of the department precludes favorable consideration of a subsequent application of the same party raising the same question. 11-463; 19-547

6. Where the same matter has been actually tried or so in issue that it might have been tried it is not again admissible. 2-595; 7-146

7. The rule as applied by the department in determining whether a contest is barred by prior proceeding, does not, as against the Government and third parties, place matters which might have been tried and determined upon the same footing with those which have thus been disposed of. 26-34

8. Erroneous denial of a statutory right will not preclude subsequent supervisory action on the part of the department, the subject matter still remaining in its jurisdiction. 22-459

9. Prior to the issuance of patent, the Land Department may reopen a case, to correct an error in the decision thereof, and readjudicate the same, after due notice to the parties. 24-280

10. Adjudication by the Land Department of a controversy involving public

lands is no bar to its jurisdiction to inquire into any question affecting the right to the lands, so long as the legal title remains in the Government, whenever necessary for the protection of the rights of the Government or of parties seeking to acquire title thereto; but where equity and justice demand it, and to prevent vexatious litigation, the doctrine of former adjudication as an equitable bar between the parties to the controversy will be applied. 35-441

11. The doctrine of, will not prevent departmental action where such course is the only one by which substantial justice can be secured and the subject matter remains within the jurisdiction of the department. 23-216

12. The doctrine of, as between the parties to a controversy, will not prevent the Government from cancelling an entry where it is apparent that it can not be perfected without perjury on the part of the entryman. 23-514

13. Final decisions of the General Land Office not conclusive as to new parties claiming before the department. 5-12

14. Final rejection of claim for land under a specified statute does not preclude a subsequent application for the same land under a different law. 5-415; 6-309

15. A final decision against a right asserted under the preemption law is no bar to a claim by the same person for the same land under a different law. 5-566

16. Adjudication of an applicant's claim for a tract of land under one law is no bar to a subsequent application of the same party under a different law and upon a different state of facts. 10-281

17. An adjudication that certain land was not excepted from a railroad grant by a rancho claim will not bar application by the same person for said land on the allegation that it was excluded from the grant by a preemption claim. 3-122

18. The final location of one of several contiguous claims does not preclude full examination in the location of the remainder, though it may result in conflict with the previous adjudication. 1-213

19. A departmental decision that land is mineral in character does not preclude subsequent investigation on the part of

the department as to the character of such land. 11-441

20. Determination of rights as between settlers and a railroad company will not preclude subsequent consideration of the status of the lands under said settlement claims in determining the right of the company as against the Government. 4-249; 5-662

21. The final determination of the Secretary as to the proper location of a boundary line of an Indian reservation should not be disturbed by his successor. 22-301

22. A final decision by the Secretary is conclusive as to departmental action therein and will not be disturbed by his successor where no new question is presented. 1-232; 5-34, 51, 483; 7-146; 9-363

23. The head of a department can not, with certain exceptions, reverse the action of his predecessor. 3-196, 537, 559, 595; 4-6, 252, 483; 8-255; 10-94; 11-504

24. A change in the person holding the office of Secretary does not prevent a review of departmental action if the legal title still remains in the Government, and the Secretary making the ruling or decision, if still in office, would be in duty bound to review or reverse his own action. 26-34, 177; 31-87

25. The Secretary has authority to review the decision of a former Secretary or revoke his own if obtained through fraud or mistake. 4-120; 6-37

26. Final decision of the head of a department reviewed on new facts. 5-109

27. The Secretary, acting through an assistant, may reopen and reverse his own decision rendered by another assistant without violating the doctrine of. 9-588

28. Final decision of the Secretary conclusive upon subordinate officers of the Land Department. 5-613; 6-378; 10-93, 200

29. Final adjudication in the department precludes further action by the General Land Office. 5-613

30. Rule not applied where the issue is solely between the Government and applicant. 4-249, 405; 5-333

31. Former action of department in administrative matter not conclusive. 4-313

32. The recommendation of the commissioner that an entry be submitted for

equitable action is an administrative act, and a decision of the Secretary that such submission is not proper is a decision on an administrative question that has the effect of arresting proceedings, but leaves the decision subject to review by his successor. 21-549

33. Decision that a ministerial duty has been correctly performed not necessarily conclusive. 7-286

34. Refusal to recommend suit to set aside patent not conclusive as to succeeding head of the department on the presentation of new ground for such action. 4-577

35. Rejection of an application for survey of an island not treated as. 9-625

36. A decision of the department directing a hearing on an application for survey, in which the doctrine of riparian ownership is considered and held not applicable, brings such question within the rule of, and the department will not thereafter consider the same in the disposition of the case on the facts submitted at the hearing. 23-430

37. A decision of the General Land Office that becomes final for want of appeal is conclusive as to the rights of all parties concerned. 18-555

38. Decision of the commissioner as to priority between two parties will not preclude his successor from passing on the final proof subsequently offered by the successful party. 4-558

39. A decision of the commissioner passing upon the validity of a school selection is an adjudication binding upon his successor. 15-385

40. The commissioner can not review a final decision of his predecessor, though any error apparent of record may be corrected by the department. 5-51; 6-4

41. The commissioner has no authority to reopen a case in which the judgment of his predecessor has become final. The department alone has jurisdiction to act in such a case. 17-125

42. After decision in a case by the General Land Office, and the expiration of the time within which an appeal may be filed, the question involved is beyond the jurisdiction of said office. 20-127

43. With certain exceptions, the commissioner has no authority to review or modify a final decision of his predecessor.

10-200, 603

44. Doctrine of, does not preclude action of General Land Office on new evidence that may be submitted in pending case.

6-174

45. Irregularity of proceeding warrants the commissioner in reviewing the decision of his predecessor.

1-363, 366

46. Plea of, not good where the commissioner's decision was rendered in the absence of material facts from the record.

6-15

47. An opinion of the commissioner based upon a partial and *ex parte* statement of the facts not conclusive.

5-610; 9-546

48. An expression of opinion by the commissioner as to the validity of an entry pending before the local office will not preclude said commissioner or his successor from a full examination of the case when reached in regular order.

11-18

49. A final decision of the General Land Office, holding a tract not excepted from a railroad grant on account of a specified settlement claim, will not preclude subsequent consideration of the effect of said claim as against the grant, on the suit of another applicant for the land.

18-454

50. Approval of final proof by examiner in General Land Office is not a decision of the commissioner that can not be reviewed by his successor.

6-379

51. A letter of instruction issued by the commissioner to a local office is not an adjudication that will prevent subsequent action on the part of his successor in office.

13-694

52. After the expiration of time allowed for appeal from a decision in a case it is too late for the commissioner to take action therein on his own motion, as the case is then removed from his jurisdiction, and further action, if any, must be taken by the department in the exercise of its supervisory authority.

14-574

53. The issuance of a final certificate by the local office can not be set up by the entryman as an adjudication that precludes such office from rendering a de-

cision on a hearing subsequently ordered by the General Land Office.

11-473

54. Action of the local officers under direction of the General Land Office will not preclude a different judgment on the final disposition of the case.

5-174, 610

55. Allowance of an entry by direction of the General Land Office will not preclude departmental action with respect to determining its validity.

5-49; 7-301

56. The fact that the validity of an entry is, so far as the General Land Office is concerned, will not preclude the consideration of such question by the Secretary.

19-288

57. Case is not, where the decision is rendered upon an incomplete record.

13-502, 592; 15-31

58. Decision of the department rendered upon an incomplete record is not.

6-179; 9-551

59. Doctrine applicable where the case falls within a particular class covered by former decision.

1-504

60. A case is not, where the ruling was in the nature of general instructions to cover all cases of its kind and was not made on appeal.

6-487

61. A ruling on a question not involved in the case is not conclusive.

5-322; 8-188

62. Doctrine only applicable to the land actually involved, though the decision may in terms purport to settle the status of the whole section.

7-54

63. A decision long acquiesced in will not be disturbed.

3-364; 8-134

64. A decision long acquiesced in will not be reconsidered on the mere allegation of error in construing the law.

11-232

65. Where a decision has become final under the rules, has long been acquiesced in, the lands involved disposed of thereunder, and such disposition was not unlawful, a petition to reopen the case will not be entertained on the mere allegation of error in construing the law, based on a later and different construction by the department.

38-553

66. Lapse of time and the rights of parties acquired in good faith under Executive action justify the application of the doctrine.

10-652

67. Authority of Secretary to set aside the approval of his predecessor on list of railroad selections questioned. 1-378

68. Where mistake or fraud is not alleged the case will not be reopened for the purpose of making a different disposition of the land, because a different rule in relation to such claims may subsequently prevail. 2-497

69. Acts done under a law in force are not affected by a subsequent repeal of the law. 4-476

70. Where a claim to lands in railroad limits is rejected under the rules it is *res judicata* between the claimant and the company though the ruling causing the rejection has since been changed. 2-499, 501

71. An application to enter properly rejected by final decision of the department under the rulings then in force is, and can not be reinstated with a view to action under a changed construction of the law. 19-459; 23-452

72. A decision of the Supreme Court in which a departmental construction of a statute is held erroneous does not warrant the department in vacating and reversing final decisions rendered in accordance with such construction. 23-455

73. When a decision of the department has become final under the rules of practice, has been long acquiesced in by the losing party, the lands involved have been disposed of thereunder, and such disposition was not unlawful, a petition to reopen the case will not be entertained, though the original decision may rest on a construction of the law that no longer obtains. 26-383

74. Adjudications of the department not disturbed on alleged error in construing the law. 5-185, 243

75. Doctrine of, will apply notwithstanding the allegation that the decision was founded upon error of fact and law. 3-21

76. The rule is not applicable to a decision denying a party the right to be heard on appeal where such decision is the result of a mistake of fact on the part of the department. 25-373

77. Plea of, not good when the tribunal had no jurisdiction over the subject decided. 4-460

78. Plea of, not good as against one who is not made a party to the proceedings in question by due notice thereof. 14-278

79. Doctrine not held applicable where due notice of decision and right of appeal were not allowed. 1-366; 4-279; 7-42

80. Plea of, will not be entertained where the decision has not been carried into execution and the case falls within the terms of the act of April 21, 1876. 4-208

81. Judgment having gone to patent, it is too late to invoke the act of April 21, 1876. 4-251

82. Plea of, not good as against the proceedings directed by the act of March 3, 1887. 8-318; 24-441

83. That the former decision can not be executed should be considered in determining whether it is a bar to further action by the department. 4-120

84. Approval of entry through verbal direction of the Secretary not, where it was presumably under subsequent consideration. 4-286

85. Case is not, because the tract involved had been applied for by another person and was awarded to the railroad company. 3-168

86. Where surveyor general refused to issue certificates of location (Louisiana donation) and appeal was taken and afterwards withdrawn the question is *res judicata*. 2-394

87. A decision conclusive when it determines the validity of conflicting claims. The extent of the conflict on subsequent showing can not affect the former adjudication. 6-634

88. Cancellation of an entry and award of the land to another is a final adjudication. 1-365

89. A final determination as to the invalidity of a claim may be properly adopted in a subsequent case where another party sets up a claim to a part of the land involved. 15-415

90. A decision of the Secretary awarding the right to make final proof as of a certain date will not preclude his successor from considering acts performed after that date for the purpose of determining whether such acts show abandonment of

the claim or impeach the good faith of the prior settlement and residence. 6-633

91. A question decided finally in a contest between A and B may not be again brought up by protest by B against the reception of A's final proofs. 2-594

92. A defeated party may so far follow the decision of the department as to see that the judgment is properly executed. 1-594

93. A contested B's homestead entry and C interpleaded, alleging settlement and improvement prior to B; the contest and interplea were dismissed and the land was declared open to entry; then B made additional entry and C contested it, alleging as before; the question of the priority of settlement and of right based on it is not *res judicata*. 2-121

94. Though the matter may be, yet the decision, if not executed, may be examined and construed by the department to determine the true character and extent of the award thereunder. 6-434

95. Though the questions involved in a private claim may be similar to those settled in a prior case, the conferee has the right to a full hearing. 1-246

96. If the decision rendered by the department was only interlocutory in character, the case, on its merits, may be renewed before the proper subordinate tribunal. 6-374

97. An extrajudicial opinion of the commissioner as to the legality of an entry, expressed upon an *ex parte* and partial statement, will not preclude subsequent departmental action. 9-182

98. Decision of board of equitable adjudication is final and conclusive. 1-411

99. Action of the War Department on matters within its jurisdiction must be accepted by this department as conclusive. 1-168

100. This department should accept as final what was so regarded by the proper department having charge of the interests of the Government. 1-173

101. The department will not take jurisdiction where such action involves the consideration of a question finally determined by a decision of the Supreme Court of the United States. 5-185; 7-204

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indemnifying bonds to cover costs, required by such regulations, be dispensed with. 39-480

6. The Land Department can not undertake to set forth in advance specifically the nature of the proof necessary to establish the right to any particular right of way applied for. 37-78

7. The mere fact of an outstanding approved right of way will not prevent the approval of a conflicting application for right of way; but in such case the conflict should be given proper weight in determining whether approval should be given to the later application, especially where the previous right of way had been actually utilized. 40-463

8. The exercise of the jurisdiction of the Secretary of the Interior over applications for rights of way within reservations of the United States involves the exercise of more than a mere legal discretion, and he should look beyond the mere technical sufficiency of the application and in broad view subserve the interests of the whole people. 40-380

II. Railroad, Tramroad, Telegraph, Telephone, etc.

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28. Regulations of January 29, 1910, requiring stipulation from railroad companies applying for rights of way involving power sites. 38-405

29. Instructions of April 14, 1911, under act of March 4, 1911, respecting rights of way for electrical power, telegraph, and telephone lines. 40-30

30. Act of March 3, 1875, grants but the use of land for the purposes specified. 4-526

31. The right-of-way privileges granted by the act of March 3, 1875, are limited to railroad companies organized as common carriers for the benefit of the general public. 30-77

32. No rights can be initiated by any railroad company under section 1, act of March 3, 1875, prior to the organization of such company under the laws of a State or Territory. 33-617; 34-593

33. The period of original construction ceases when the road is open to the public for general use. 14-566

34. The use of material under the general act of 1875 and the special act of February 15, 1887, is limited to construction, and does not include repair or improvement. 14-566

35. The articles of incorporation and proofs of organization are required by the act of 1875 to be filed with the Secretary

of the Interior, and where the same are found sufficient to identify the company as a beneficiary of the grant, and are accepted by the Secretary, the right acquired by said acceptance will relate back to the time when said articles and proofs were presented, so as to protect the company in any subsequent use of timber and material necessary for construction of the road. 28-439

36. As between the United States and a railroad company claiming the benefit of the act of March 3, 1875, the company is entitled to take from the public lands adjacent to the line of its proposed road timber and material necessary for the construction thereof on the filing of its articles of incorporation and due proofs of organization, as provided in section 1 of said act. 28-439

37. Where the laws of a State or Territory declare that every act done by a foreign corporation within said State or Territory prior to filing its articles of incorporation therein as provided by law shall be null and void, such corporation can acquire no rights within that jurisdiction under the act of March 3, 1875, by the survey of a right of way prior to the filing of its articles of incorporation in compliance with such State or Territorial laws. 38-74

38. Gravel beds or ballast pits are not subject to selection under the act of 1875, but may be used temporarily for purposes of construction. 14-414

39. The taking of gravel from a pit by a railroad company for the use and maintenance of its line of road is for a public purpose or use within the meaning of the act of March 3, 1875, and a right-of-way map filed under said act, showing a spur from the main line of the road to a gravel pit, constructed for the purpose of securing gravel for use along the main line of road, may be approved, if otherwise free from objection. 30-238

40. Timber may not be taken from lands adjacent to one part of the road for the purposes of constructing another part. 8-41

41. If timber necessary for construction of the road can not be found literally adjacent to and within the termini of the proposed road, it is permissible to

go beyond said termini to secure such material. 28-439

42. In determining whether timber is taken from lands adjacent to the line of the proposed road, the nature of the country to be traversed by said road and the most available means of transportation may be considered. 28-439

43. The right to take material from the public land conferred by the acts of 1872 and 1875, as defined by the word "adjacent," does not extend beyond the tier of sections through which the right of way passes and an additional tier of sections on either side. 8-41

44. Lands 150 miles distant from the road are not "adjacent" thereto in the meaning of the statute. 7-541

45. The right to take material for construction purposes is limited to "adjacent" lands. 7-541

46. Additional lands under the second section of the act of July 1, 1862, not granted except upon full showing as to the necessity for the land. 3-587

47. The act of 1875 only requires approval of map on surveyed lands. 1-397

48. No authority for map of location over unsurveyed land. 14-336

49. Maps will not be approved where the line of road either wholly or in part traverses unsurveyed land. 15-88

50. Maps of location over unsurveyed lands will be accepted for information only and will not be approved. 30-591

51. Approval of a map of railroad, over unsurveyed lands confers no franchise. 15-192

52. Entries of public land crossed by right of way are subject to prior location of. 4-523

53. Grant of, across a tract of land does not diminish the acreage held in fee by the owner. 21-114

54. No deduction in acreage or payments will be made in entries of Fond du Lac Indian lands traversed by the Northern Pacific right of way because of the area embraced in such right of way. 39-565

55. The notation of the company's right on the entry papers is not authorized where the road is constructed over unsurveyed land and an entry is afterwards

allowed for land through which the road extends. 8-115

56. A statement reserving the right of the company may be placed in a patent issued under an entry allowed for lands over which a road was previously constructed and at a time when the lands were unsurveyed. (See 20-131.) 8-115

57. In issuing patents under the public land laws for lands over which a railroad right of way exists, such right may be reserved in the absence of statutory provisions operating to protect said right of way. 22-451

58. A right of way under the act of March 3, 1875, is fully protected by the act as against subsequent adverse rights, and a reservation of such right of way, in final certificates and patents issued for lands traversed thereby, is not necessary, and should not be inserted. 23-67; 27-430; 29-478

59. A reservation of a, acquired under a special act may properly be incorporated in a final certificate or patent issued for land traversed by said right of way. 27-430

60. A statutory grant of a railroad, is a grant of an easement, and the lands over which the right of way is located may be disposed of by patents to others, subject to whatever right the company may have in the same. 19-386

61. A clause, reserving, should not be inserted in final certificates of entry for lands over which a right of way has been granted under the act of 1875, where it appears that there has been a breach of the conditions imposed by said act, but no reassertion of ownership by the Government, as, under the terms of said act, the rights of the company are protected without such reservation. 20-131

62. In the issuance of patents to the Indian allottees of lands in the Southern Ute Reservation, over which the Denver & Rio Grande Railroad has been constructed, a clause should be inserted setting forth that the conveyance is made subject to the right of way granted to said road by the special act of June 8, 1872, which does not in terms protect the company's right. 26-77

63. The location of a, across a reservation, wherein the grant is confined to

such right of way, operates to exhaust the right of the company so far as the rights of others are concerned; and if such location, on the subsequent construction of the road, is abandoned, the rights of adverse claimants will not be embarrassed by reserving a, on the line as constructed, in the patents issued to such claimants. 22-451

64. A map of location not required to secure, if a road has been actually constructed by a company which has observed the preliminary requirements. 8-115

65. The map of location should be filed within 12 months after such location is made on surveyed land. (See 29-112.) 12-79

66. A map filed within 12 months after location, which is returned for amendment, will be held to have been filed in time though the statutory period may expire before the perfected map is filed. 11-552

67. The fact that an amended map is not filed within the period fixed by law for filing the original will not prevent its acceptance if the original was filed in time. 13-47

68. A map of location may be accepted as filed within time where the survey of the line and the construction of the road are carried on at the same time and the map of such survey is filed within 12 months after the location of the road. 13-47

69. The data on all maps of right of way should so determine the line of route involved, with reference to the public surveys, that the lines on the surface of the earth may be reproduced at any time if necessary for verification. 18-510

70. The termini of the road should be noted on the map of location accompanying an application for. 12-72, 92

71. The termini of located sections of road should be designated by reference to the lines of the public survey. 16-464

72. A map of location under the act of March 3, 1875, will not be approved if the termini of the road are not distinctly stated in the affidavit and certificate accompanying the same. 13-18

73. It is not essential that the articles of incorporation required to be filed by section 1, act of March 3, 1875, in con-

nection with applications for right of way, shall designate the termini of the road, where the laws of the State under which the company was organized do not require it. (See 40-184, 187.) 36-488

74. The mere filing by a railroad company of its articles of incorporation, which do not show the termini of the road, does not entitle it to recognition as a beneficiary under the act of March 3, 1875, in the absence of an application for a specific right of way. 40-184, 187

75. Maps showing a continuous line of road may be submitted for approval, though exhibiting sections of road in excess of 20 miles. 11-384

76. Under an act granting a, for a railroad wherein the general direction of the road is specified, the department is without authority to approve the location of a section that shows a radical departure from the direction named in the grant. 21-1

77. A railway company that secures a, under the act of March 3, 1875, and fails to complete its line of road within five years, as required by section 4 of said act, may file a new map of location, which will be operative only on such portions of the public land as are free from claim or right at the date of approval. 21-250

78. Rights secured under the act of March 3, 1875, by approval of maps of location of a line of railroad, do not become forfeited merely by failure to construct and operate a railroad along such line of location within the period named in the fourth section of that act; but where those claiming under such approval have filed written consent to the approval of conflicting maps of location, the latter maps may also be approved. 30-591

79. Rights of way under the acts of March 3, 1875, and March 3, 1891, are mere easements, and an applicant to purchase lands over which they pass, under the timber and stone act, will be required to pay for the entire area of the legal subdivisions applied for, notwithstanding such rights of way. 32-33

80. No such right is acquired by an application under the act of March 3, 1875, before approval thereof and prior to construction of the road, as will prevent the

Secretary withdrawing the lands for use as a reservoir site under the act of June 17, 1902. 32-597

81. No such right is acquired under the act of March 3, 1875, by a mere survey of the route of a proposed line of railroad as will except the lands from reservation by the Government. 36-394

82. Where a railroad company files an application intended to be for right of way for a railroad through a canyon or narrow defile, but by mistake the map of its proposed road shows the line of route to be some distance from the canyon and running through an impassable mountain range, it will be allowed to amend its application to conform to the original intention, to the exclusion of an intervening conflicting application for a reservoir site in the same canyon or defile. 32-452

83. Application for railroad right of way through a narrow canyon in an Indian reservation, which is the most feasible site for a reservoir for irrigation of lands in the vicinity, rejected for the reasons that construction of the road as contemplated would prevent use of the canyon for reservoir purposes and that it is practicable to construct the railroad at a higher grade without interfering with the reservoir site. 40-470

84. The length of each section of road should be stated in the affidavit and certificate accompanying the map submitted for approval. 12-360

85. The map submitted with application for, should be in the form of one continuous map and not in detached sections. 12-552

86. The papers and maps of beneficiaries are required to be complete in themselves, and wholly independent of those filed by any other company. 22-636

87. The affidavit and certificate required on a map showing the location of a section of road should be written on the same sheet with the map. 16-464

88. A map will not be approved if the statements in the certificate and affidavit accompanying the same are not in accordance with the facts as otherwise shown. 11-552

89. Maps of constructed roads are approved only where maps of definite location have not theretofore been approved;

and the map of constructed road, in such case, is treated as a map of definite location for purposes of approval. 18-510

90. A railroad company having adopted one line along the route provided for by its charter, and having filed a plat thereof with the Secretary of the Interior for approval under the act of March 3, 1875, may thereafter adopt another route and secure rights by constructing upon the changed location. 33-617

91. The approval of a map of location, or a plat of station grounds, under the act of March 3, 1875, affects only public lands, and if there are no public lands to be affected by the claimed right the maps should not be approved by the department. 29-18

92. The act of March 3, 1899, permitting the approval of a map of location "across any forest reservation or reservoir site," is limited in the scope of its operation to reservations falling within the control or under the jurisdiction of the Secretary of the Interior. 29-257

93. A company not organized as a common carrier with passenger and freight facilities is not entitled to. 14-321

94. Opinion of the Attorney General requested on the authority of the department to revoke an allowance of right-of-way privileges. (See 12-574.) 8-374

95. The Secretary has the power to annul the action of his predecessor in approving the map of location where such approval is secured by fraud and misrepresentation and for a purpose not authorized by law. (See 147 U. S., 165.) 12-574

96. The approval of, for the Union River Logging Railroad Co. recalled and vacated. (See 147 U. S., 165.) 12-574

97. Judicial proceedings should be instituted by the Government to secure forfeiture where the grantee fails to construct any portion of its road, and such action is necessary for the protection of a constructed road whose right of way, as approved by the department, is in part identical with that located by the former company. 19-588

98. The grant of right of way (Pacific roads) was an absolute and unconditional present grant, and all persons acquiring any portion of the public lands after the

passage of the act took it subject to the right of way conferred by it for the proposed road. 2-846

99. The lands granted for railroad, under the act of June 8, 1872, are subject to such reservation, though the road was not built as provided by said act, and can only be relieved therefrom by judicial proceedings or legislative enactment. 17-430

100. The Northern Pacific by section 2, act of July 2, 1864, holds its right of way under a qualified fee, which, so long as the qualification annexed is not at an end, confers upon the company the exclusive right of possession; a settlement, therefore, upon said right of way is not a settlement upon the public land, and confers no right or claim to adjoining public land. 28-412

101. The question as to whether a railroad company has forfeited its privileges, under the act of March 3, 1875, by failure to construct its road within the period designated in section 4 of said act, is one that must be determined in the courts. 20-131

102. The grant of a railroad, across an Indian reservation, that has vested by reason of compliance with the conditions precedent, is not lost through failure to construct the road within the period specified (a condition subsequent), where no advantage of such failure has been taken by the Government. 26-224

103. The question of priority between two roads claiming right of way under act of March 3, 1875, must be determined in the courts. 1-396

104. In case of conflicting applications for right of way for a railroad through a canyon, pass, or defile under the act of March 3, 1875, the department will approve the maps of location filed by each company, if regular, without regard to any question of priority, and leave to the courts any determination as to the rights of the companies under their respective applications. 31-411

105. In the absence of statutory authority granting right of way through the Puyallup Indian Reservation, an application therefor should be addressed to Congress. 7-450

106. The cession to the United States of the Red Lake Indian lands made in

pursuance of the act of January 14, 1889, was for the sole purpose of disposing of said lands for the benefit of the Indians, and said lands are therefore not public lands, subject to the general act of March 3, 1875. 29-620

107. The act of March 2, 1899, granting a, for a railway, telegraph, and telephone line, through "any Indian reservation" or through "any lands reserved for an Indian agency or for other purposes in connection with the Indian service," does not cover lands occupying the status of those ceded under the act of January 14, 1889; and the department is therefore not justified in taking any action with respect to said lands under said act of 1899. 29-620

108. The approval of the department is necessary, under the act of March 2, 1899, to the acquirement of a right of way by a proposed line of railroad over an Indian allotment, and to the privilege granted by the act of March 3, 1875, to use such a right in common with another company. 31-119

109. A railroad company upon compliance with the provisions of the act of March 2, 1899, is authorized to acquire thereunder rights of way through lots or lands situate within the limits of any townsite in the Indian Territory, the national or tribal title to which has not been extinguished by full payment of the purchase money therefor and by the execution and delivery of deeds of conveyance thereof in accordance with an act of Congress authorizing such conveyance. 31-39

110. The right of a railroad company to extend its line of road over and across a navigable stream within the Indian Territory by means of a bridge to be constructed over such stream for that purpose can only be secured by act of Congress granting such privilege; but this does not affect the authority of the Secretary in approving maps of definite location for rights of way, under the act of March 2, 1899, for even though the stream be navigable, his approval of the maps is a condition to the right to approach the bridge from the Indian lands on either side of such stream. 31-39

111. The proviso to section 1 of the act of March 2, 1899, that no right of way shall be granted under said section for a proposed road parallel to and within 10 miles of a constructed road or one in actual course of construction, applies only where a road has been constructed or is in the actual course of construction across the Indian lands, and has no application in a case where a right of way has been granted or is applied for upon the mere survey and platting of the proposed line of road. 32-187

112. The provision in section 4, act of March 2, 1899, that rights of way granted by that act "shall be deemed forfeited and abandoned *ipso facto*" as to portions of the road not constructed and in operation as required by the act, is not effective to work a forfeiture of the grant until there has been due ascertainment and declaration of forfeiture by proper authority; and at any time prior to such ascertainment the Secretary may extend the time for completion of the road, under authority of the proviso to said section. 39-44

113. Under authority conferred upon the Secretary by the act of March 2, 1899, to make all needful rules and regulations for the proper execution and carrying into effect of the provisions of that act, the department has the right to make reasonable requirements of an applicant for right of way under the act, such as requiring a stipulation that it will keep the right of way free from inflammable materials, will take precautions against fire, pay damages caused by fire, permit the United States to cross the right of way with telegraph and telephone lines, roadways, ditches, canals, etc. 39-174

114. Under a grant of, to a railway company across an Indian reservation, where the statute authorizes the construction and maintenance of a telephone line upon said right of way, it is immaterial, so far as the United States and Indians are concerned, whether said railway company constructs and operates the telephone line or permits another party so to do. 29-1

115. The act of July 24, 1866, authorizing the construction and maintenance of telegraph lines through and over the

public domain, and along military or post roads of the United States, contains no grant or authority for the construction and maintenance of telephone lines. 29-1

116. The provisions of the acts of March 3, 1901, and February 15, 1901, relating to rights of way for telephone and telegraph lines through Indian reservations, are not necessarily repugnant, and both may, without inconsistency or conflict, be given effect. 30-588

117. Action of the department authorizing the construction of a road across an Indian reservation pending the completion of the necessary arrangements is not final in its character, and confers no vested rights. 12-481

118. The proviso in section 5, act of March 3, 1875, does not render said act generally applicable where a right of way is provided for under treaty stipulation; but provides that when such privilege has been specifically granted the provisions of said act shall govern so far as applicable. 12-481

119. Conveyances for, executed by Indians holding under patents in which the right of alienation is dependent upon the President's approval must be submitted to the President for his action. 12-481

120. Through certain Indian reservations granted by the act of February 15, 1887, was secured on the approval of the maps showing the location of the road, and the construction thereof in due compliance with said act; and no further approval of said location is required by reason of the restoration of said lands to the public domain and their subsequent survey. 18-510

121. The Commissioner of Indian Affairs has authority to receive, for disbursement to the Indians, the moneys due individual Indian occupants, under section 3, act of March 3, 1899, as compensation for property taken or damage done by reason of the construction of the line of railroad provided for by said act. 32-509

122. The payment to be made to the Secretary for the benefit of the Choctaw and Creek Nations, under section 7, act of March 3, 1899, is intended as compensation for any and all damages

of whatever nature said nations may have suffered by reason of the construction of the line of railway through those nations; and the actual number of miles of road within said nations furnishes the basis for determining the amount of compensation due them under said section, irrespective of the character of the occupation of the individual occupants, for whom compensation is to be made in accordance with section 3 of said act. 32-509

123. The grant of a right of way through the Indian Territory, made to the Kansas & Arkansas Valley Railroad Co. by the acts of June 1, 1886, and February 24, 1891, was of an easement only and not of the fee, subject to the legislative power to declare and open highways or roads across such right of way wherever necessary and proper for the public convenience; and under the act of June 30, 1902, providing for the allotment and disposal of the Creek Indian lands, the Indian Office, under supervision of the Secretary, may make orders establishing highways or roads over and across said lands, whenever necessary for the public good, and enforce them across such railroad right of way by removing the obstructing fences of the company. 32-304

124. The annual payment of \$15 per mile of road, required by various acts of Congress granting rights of way to railroad companies through Indian Territory, is not in the nature of compensation, nor a property tax upon the land involved, but is in the nature of a franchise tax or charge upon the business of the corporation constructing the road; and is in no-wise affected by the departmental regulation fixing November 1, 1908, as the date prior to which railroad companies might acquire title to the land occupied by them for rights of way, etc. 38-414

125. After the State of Oklahoma was admitted into the Union, November 16, 1907, the Indians, as tribes or nations, ceased to own and occupy the lands in the sense in which that expression is used in the acts fixing the \$15 charge, and thereafter such charge could not lawfully be exacted. However, the payment for the year ending June 30, 1908, being payable in advance, must be paid in full. 38-414

126. The relinquishment to the United States by the Indians of their interest in the Fond du Lac Reservation does not defeat their subsequent claim for damages on account of the location of a railroad right of way through said reservation prior to such relinquishment. 19-320

127. The act of February 18, 1888, and the acts amendatory thereof provided for a right of way over Indian lands, but the provisions so made are inapplicable to lands held under individual allotments, and confer no right of way privileges as to lands thus held. 27-414

128. For railroads are approved though crossing school sections. 13-454

129. The act of March 3, 1875, is applicable to the Denver & Rio Grande Railroad Co. and not inconsistent with the act of 1872. 8-41

130. Company is not required to file proof of organization under the laws of every State and Territory through which the road may pass. 5-384

131. Application for, will not be approved in the absence of due proof showing the organization of the company under its incorporation. 11-432

132. Application under the act of 1875 should be accompanied by an authenticated copy of the local statutes regulating the organization of railroad companies. 12-72

133. Privilege does not attach on the filing and acceptance of the articles of incorporation and proofs of organization, but on location, either by actual construction or filing a map. 8-115

134. Where a right of way has been duly approved the transfer of the line to another company carries the right of way with it, and the approval of a new map is unnecessary. 2-543

135. Act of March 3, 1875, applicable to "public-land strip." 5-384

136. The beneficiary under a special act having abandoned its rights thereunder may avail itself of the general act of March 3, 1875, by due compliance with the terms thereof. 22-674

137. Lands of the Chicago, Milwaukee & St. Paul company forfeited under the act of March 2, 1889, opened to entry. (See 21-324.) 20-121

138. Section 2288, R. S., as amended by the act of March 3, 1891, authorizing settlers to execute conveyances of lands embraced within their claims for "railroad" right of way purposes, is applicable to "tram roads." 20-509

139. The words "for the right of way of railroads," as used in section 2288, R. S., are not limited to the width of the railroad track, but include such space as is necessary for side track, stock yards, or other purpose incident to the proper business of a railroad as a common carrier. 28-561

140. All railroads in operation are by statutory provision "post roads," and as such their right of way is subject to the use of any telegraph company which accepts the provisions of the act of July 24, 1866, and desires to use such right of way for its line in such manner as will not interfere with the operation of the road. 26-572

141. The provisions of the general act of March 3, 1875, are not applicable to lands in Alaska. 25-290

142. A railroad right of way, under the act of March 3, 1875, across Minnesota lands withdrawn by proclamation of November 28, 1881, as a "water reserve," can not be approved, for lands so reserved are specifically excepted from the operation of said act by section 5 thereof. 29-257

143. The general authority for securing railroad rights of way in the Indian Territory, granted by section 13, act of February 28, 1902, can not be exercised to secure a right of way across the Sulphur Springs Reservation, created under authority of the act of July 1, 1902. 32-354

144. The grant of a right of way to the Missouri, Kansas & Texas Railway Co. made by the act of July 26, 1866, is subject not only to the conditions expressed in the grant, but to the necessarily implied condition that it be used for the purpose of maintaining a railroad; and the grantee has no authority under the grant to lease any portion of its right of way for the purpose of sinking wells thereon for extracting, piping, and removing oil and natural gas therefrom. 33-470

145. The grant of sections 16 and 36 made to the Territory of New Mexico for

school purposes by the act of June 21, 1898, is a grant *in præsentia*, and any question as to the authority of the Territory to grant rights of way for railroads across any such lands is one for determination by the officers of the Territory and not by the Secretary of the Interior. 34-548

146. The act of March 3, 1901, specifically provides that telephone and telegraph lines constructed under its provisions shall be operated and maintained under rules and regulations to be prescribed by the Secretary of the Interior, which carries with it the power to require sworn statements from the person, company, or corporation operating the lines, to the end that the annual tax be properly assessed and collected; but in the event of non-compliance with such requirement, it is not within the power of the Secretary, under Executive authority, to close the places of business of the offending parties, any question as to the forfeiture of the right of way being a matter for determination by the courts. 34-288

147. The annual tax upon telephone and telegraph lines referred to in section 3, act of March 3, 1901, is conditioned upon two things: (1) The line upon which the tax is sought to be imposed must be upon lands such as the Secretary of the Interior is authorized to subject to the terms of the act, and (2) the line must not be subject to State or Territorial taxation. Where the line upon which the tax is sought to be imposed runs through any of the lands which the Secretary is authorized to subject to the terms of the act, and is not subject to State or Territorial taxation, such line is under the act subject to an annual tax not exceeding \$5 for each 10 miles thereof constructed and maintained, regardless of any tax which may be levied and collected by a municipality through which the line runs. 34-288

148. Rights of way under section 3, act of March 3, 1901, are "in the nature of an easement," and are property rights subject to sale or transfer without the consent of the Secretary of the Interior. 34-288

149. The term "line," as employed in section 3, act of March 3, 1901, means the right of way granted, and each separate

line of poles is held to constitute an independent line, upon which the grantee may place as many wires as he chooses, the tax to be assessed against the property only at the rate of \$5 for each 10 miles of line. In towns, where no well-defined system of parallel wires is maintained, each wire will be regarded as covering a separate right of way, and, if otherwise within the terms of the act, is subject to taxation as such. 34-288

150. The approval by the Secretary of the Interior of the plats of incorporated cities and towns in the Indian Territory operates as a dedication of the streets and alleys thereof to public use, and thereafter, the Indians no longer having any interest in the ground embraced in such streets and alleys, the Secretary of the Interior has no authority to subject them to the terms of section 3, act of March 3, 1901, authorizing him, among other things, to grant rights of way for the construction of telephone and telegraph lines within and through incorporated cities and towns in the Indian Territory. 34-679

151. Instructions of January 29, 1910, requiring applicants for railroad rights of way over public lands upon which are possible power sites to file, as a prerequisite to approval thereof, a stipulation that applicant will, upon proper request, elevate or move its tracks and roadbed in event of withdrawal for power purposes of any portion of the public lands over which the right of way passes, vacated and annulled. 39-89

152. Where an application for railroad right of way covers public lands upon which are possible power sites, examination should be had by the Land Department, before acting upon the application, to determine whether the lands may be utilized to the best advantage for power sites or other power purposes; and if it appear that the public good resultant from withholding the land for power development is disproportionate to the benefits to be derived from construction of the railroad, the application should be approved, even though it might interfere with development of the power; but if, on the other hand, the power possibilities are sufficient to justify utilization of the public lands for such purposes, to the ex-

clusion of other uses which may conflict, the lands should be withdrawn and the application rejected, unless the line of road can be so located as not to interfere or conflict with the use of the land for power purposes. 39-86

153. Under the rule laid down in departmental decision in Continental Tunnel Railway Co. (39 L. D., 86), the power-site stipulation set forth in the regulations of January 29, 1910 (38 L. D., 405), will no longer be required of applicants for right of way; but where an application accompanied by such stipulation has been approved, without a preliminary investigation having been made, the stipulation will not be canceled or surrendered unless the company will relinquish all rights it may have acquired under the approval, to the end that it may be determined whether the right of way is so situated with reference to water courses susceptible of power development as to require the withdrawal of the land involved for power purposes, and whether use of the land is essential to development of the power. 39-209

154. Where right of way over lands in an Indian reservation is sought under the act of March 2, 1899, examination should be made to ascertain whether the lands over which the right of way passes are so situated with reference to water courses susceptible of power development as to justify use of the land for power purposes, and if use for such purpose be found necessary, it should be ascertained whether the right of way as located, both as to alignment and grade, will interfere with development of power; and, if so, applicant should be advised and required to change its line, provided it can be so located as not to interfere with use of the land for power purposes; and in case the lands have been withdrawn for power purposes appropriate recommendation made to the President, to the end that the application be approved; and should applicant refuse to make such change the application should be rejected. 39-175

155. Section 6, act of May 14, 1898, authorizes the issuance of a permit for a right of way in Alaska only for the construction of wagon roads and tramways. A foot bridge does not come within the

ordinary or commonly accepted meaning of either a wagon road or a tramway.

29-451

156. An application for a tramroad, under said section 6, should not be granted, if the construction of said road would operate to destroy or seriously impair the water-front privileges reserved to the public by other provisions of said act. 29-447

157. The right to levy and collect freight and passenger charges by a company operating a tramway, under the terms of the act of 1898, is subject to the supervision of the Secretary of the Interior. 29-447

158. The phrase "line of mean high tide" used in an application for a tramroad in Alaska, under section 6, act of May 14, 1898, must be regarded by the department, in its action on such application, as meaning that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. 29-447

III. Station Grounds.

159. Plats showing the selection of station grounds should be submitted through the General Land Office. 4-525

160. Location of station grounds to be approved by Secretary. 4-525

161. Locations may be disapproved where the intent of the act is not secured. 4-525

162. Each station as located must represent its particular section of 10 miles. 4-525

163. Depots, station houses, etc., not included in the term "railroad." 8-41

164. Land embraced within a *prima facie* valid entry is not subject to selection for station purposes. 12-264

165. The actual use of unsurveyed public land as station grounds precludes the subsequent acquisition of adverse rights to the land so occupied. 26-83

166. The actual use of land as station grounds, prior to survey, by a company that has filed its articles of incorporation, proofs of organization, and constructed a railroad over unsurveyed land, entitles said company to an approval of a plat of said grounds, as against an intervening homestead entry, if such use antedates the settlement of the homesteader. 24-460

167. A plat of station grounds covering land embraced within a prior mineral application can not be approved; but the use and occupancy of such land for station purposes will protect the right of the company, as against subsequent claimants, if the mineral application is abandoned.

25-250

168. An intervening entry should not defeat the approval of a station plat, if the land was open to appropriation under the right-of-way act at the date of filing said plat.

26-181

169. A homestead entry allowed of land in the prior actual use and occupancy of a railroad company in the necessary operation and maintenance of its road, must be held subject to the prior right of use in the company under its application for additional station grounds.

29-36

170. An application for station grounds, properly rejected on account of an existing entry of the land involved, and awaiting action on appeal, will not attach on the subsequent cancellation of said entry.

22-685

171. Plats of station grounds must show the line of the company's right of way.

13-18

172. An application under section 21, act of March 3, 1871, to purchase land for station purposes unacted upon at the time of the forfeiture of the grant made by said act can not be allowed.

13-665

173. A selection of a tract exceeding 20 acres in area can not be approved.

14-117

174. A plat showing proposed station grounds extending one and a half miles along both sides of the line of the road and 75 feet in width will not be approved.

14-118

175. A grant for station purposes is not in fee, but an easement.

14-109

176. Application to select station grounds should not be submitted until the company has secured the approval of its right of way.

14-118

177. Right of selection for station purposes is limited to lands adjoining the company's right of way theretofore acquired.

14-117, 414

178. A plat of station grounds will not be approved where the location is such as

to exclude access to public lands not included therein.

13-111; 14-102

179. An application for additional, under the second section of the act of July 1, 1862, should explicitly show the necessity for such land.

3-587

180. The grant of, to the Union Pacific Railway Co. by section 2, act of July 1, 1862, may extend beyond 200 feet on either side of the road, where the land is desired for the uses specified in the act, and the necessity for the use is made to appear.

25-540

181. The act of April 25, 1896, provides for the acquirement of additional grounds "at stations *now existing* or for the establishment of new stations or depots;" hence applications for additional grounds at stations not existing at the time of the passage of said act can not be allowed.

31-124

182. In the disposition of applications for additional station grounds under the act of April 25, 1896, the Secretary of the Interior must first determine the question as to necessity for taking such ground, and, thereafter, if the company's maps of definite location are approved, proceed as provided by said statute to settle the question of compensation.

26-280

183. The right to take additional station grounds under section 2, act of July 27, 1866, can not be recognized in the absence of a satisfactory showing of the necessity for the use of such additional ground.

27-322; 29-36, 338

184. It is not necessary, in order to warrant the approval of a plat of additional station grounds under the act of July 27, 1866, that the plat shall embrace only lands in actual use and necessary for the present operation of the road. The company has the right to anticipate the future necessities of the road, but the showing of present necessities must reasonably support the claim for future use.

30-239

185. Under section 2, act of July 27, 1866, providing for a right of way for the Atlantic & Pacific Railroad, "including all necessary grounds for . . . water stations," it can not be held that a "pipe line" is embraced in the general provision for a "water station;" and where the application shows that the necessity for

said line arises from causes other than the operation and maintenance of the road it can not be approved. 27-649

186. The grant of necessary lands for station and other purposes, outside the limits of the general right of way, does not, like the grant of the general right of way, relate back to the date of the act making the grant; hence no rights are acquired, as against an adverse claimant, by an application for additional station grounds tendered in advance of actual use and occupancy and at a time when the lands are appropriated by an existing entry. 27-322

187. Under a grant of a railroad right of way through the Indian Territory, with necessary station grounds, it is a proper exercise of the general authority of the Interior Department to require a plat to be filed showing the lands required for station purposes, although the granting act does not provide for the filing of such plat, and the approval thereof fixes the right of the company to occupy the ground included therein. 28-130

188. The acts of April 25, 1896, and March 2, 1899, do not divest or impair rights theretofore acquired under previous right-of-way legislation, but place limitations upon the extent to which the Secretary of the Interior may thereafter grant or authorize the use of grounds, for station and other purposes, by companies operating railroads in Indian Territory, and regulate the procedure whereby such grant or authority may be obtained. 29-338

189. The act of March 2, 1899, prescribes limitations as to the width and length of station grounds to be taken thereunder, and a map of station grounds which shows a disregard of these limitations can not be legally approved. 30-599

190. The right to station grounds under the act of May 14, 1898, is limited to one station for each 10 miles of road, not to exceed in amount 20 acres for each station, with the exception to this limitation that the grant may, at such stations as are also junctions or terminals, include 40 acres additional, if necessary for legitimate terminal or junction purposes. 29-106

191. Lands selected for terminal purposes under the act of May 14, 1898, should be taken in one compact body, where a sufficient quantity in such form can be found for the necessary uses of the railroad at or near its terminus; but the selection of separate tracts may be permitted, where the necessity therefor is made to appear. 29-106

192. Under the act of March 1, 1899, granting a right of way through the Nez Percés Indian lands, the company may erect, or permit others to erect, upon its right of way and depot grounds, suitable structures or buildings, such as warehouses and elevators, for the convenient receipt and delivery of freight, so long as the exercise of the franchises granted is not interfered with, and a free and safe passage is left for the carriage of freight and passengers. 29-569

193. The special grant to the Big Horn Southern Railroad Co. through the Crow Indian Reservation by the act of February 12, 1889, is limited to one station for each 10 miles of road, and a like limitation is placed upon rights of way granted by the act of March 3, 1875. *Held:* That upon the termination of the reservation the number of stations can not be increased under the general act of 1875, nor can the location of stations at the extreme ends of the 10-mile sections, reckoned from the initial point of the road, be made the basis for the taking of a station on account of an intermediate 10 miles between the middle points of the 10-mile sections. 35-369

194. Section 1 of the act of March 3, 1875, does not make an absolute grant of 20 acres of public lands for station purposes for each 10 miles of road, regardless of necessity therefor; but the measure of the right thereby granted is the reasonable necessities of the road, not to exceed either 20 acres to each station or one station for each 10 miles. 40-411

195. And station privileges on the former Crow Creek Indian Reservation, as provided for the Chicago, Milwaukee & St. Paul Railway Co. by section 16, act of March 2, 1889, is not defeated by a settlement right claimed under section 23 of said act. 14-167

196. The failure of the Chicago, Milwaukee & St. Paul company to complete the road within the time prescribed in the act of March 2, 1889, worked a forfeiture of all the lands reserved to the railroad company by section 16 of said act for right of way and station purposes, dependent only upon the proclamation of the President declaring the fact of said forfeiture. 19-429

197. Proclamation of the President, declaring the forfeiture of the grant to the Chicago, Milwaukee & St. Paul Railway Co. by the act of March 2, 1889. 19-431

198. A plat of station grounds on unsurveyed land will not be approved although a map showing the line of road over such land may have been approved in accordance with former practice. 15-192

199. On application for the approval of a plat, the land involved, though within a partly unsurveyed township, may be treated as surveyed, where it lies within a surveyed townsite, and the survey of said station grounds is connected with the public surveys. 27-714

199½. The right of way granted by section 13, act of February 28, 1902, is a mere easement, for "depot grounds, terminals, and other railway purposes," and the grantee has no authority to extract oil from the grounds embraced in a right of way acquired under said act. 34-504

IV. Toll Road.

200. A toll road company, by the location and construction of its road acquires a vested right over public lands under section 2477, R. S., that can not be defeated by a subsequent townsite settlement; and in such case the townsite patent should issue subject to the easement held by the company. 21-351

201. In recognizing a, claimed on behalf of a toll road under section 2477, R. S., the department will not, in the absence of expressed statutory authority, determine the width of such right of way. 22-145

202. It was not intended by section 2477, R. S., to grant a, for highways over public lands in advance of apparent necessity therefor. 26-446

203. A toll road is a highway within the meaning of section 2477, R. S. 31-405

204. The reservation of a right of way claimed under section 2477, R. S., in a patent issued for lands traversed thereby, is not necessary to the protection of such right. 31-405

V. Canals, Ditches, and Reservoirs.

205. Circular of April 17, 1891, in the matter of canals, ditches, and reservoirs located under act of March 3, 1891. 12-429

206. Circular of April 21, 1892, regulating applications under acts of March 3, 1875, and March 3, 1891. 14-438

207. Circular of February 20, 1894, with respect to applications for canal, ditch, and reservoir. 18-168

208. Regulations of March 8, 1895, under act of January 21, 1895. 20-165

209. Regulations of December 23, 1896, under act of January 21, 1895. 23-519

210. Regulations of June 27, 1900, concerning canals, ditches, and reservoirs over the public lands and reservations. 30-325

211. Regulations of September 17, 1898, concerning canals, reservoirs, etc. 27-495

212. Regulations of July 8, 1898, concerning canals, ditches, reservoirs; oil pipe lines; reservoirs for watering stock. 27-200

213. Circular of July 8, 1898, with respect to reservoirs for watering live stock, amended June 23, 1899. 28-552

214. Amendment of regulations of July 8, 1898, governing applications for right of way for canals, ditches, and reservoirs. 29-18

215. Regulations of July 8, 1901, concerning canals, ditches, reservoirs, etc. 31-13

216. Regulations of June 26, 1902, concerning canals, ditches, reservoirs, etc. 31-503

217. Regulations of September 28, 1905, relative to canals, ditches, reservoirs, telegraph and telephone lines, etc. 34-212

218. Paragraphs 3 and 66 of the circular of September 28, 1905, relating to canals, reservoirs, etc., amended. 34-533

219. Paragraph 54 of regulations of September 28, 1905, requiring that all appli-

cations for rights of way under the act of February 15, 1901, for telegraph and telephone lines, must be accompanied by an official statement of the Post Office Department showing that the applicant has complied with the regulations under title 65 of the Revised Statutes, revoked.

34-693

220. General regulations of June 6, 1908.

36-567

221. The Land Department can not undertake to set forth in advance specifically the nature of the proof necessary to establish the right to any particular right of way applied for.

37-78

222. The extent of the grant made by the act of March 3, 1891, is defined by the statute, and the Secretary is not authorized to accord a qualified approval of applications filed thereunder for the purpose of limiting the estate thereby granted.

39-194

223. Sections 2339 and 2340, R. S., make no provision for the filing and approval of maps showing the location of reservoir sites and pipe lines.

29-213

224. The Land Department has no power to declare a forfeiture of a right of way acquired under section 2339, R. S.

32-463

225. The permission to use public lands under the act of January 21, 1895, terminates with a disposal of said land; and any person receiving title from the United States to land so occupied will take it free from any charge thereon by reason of the right granted under said act.

20-164

226. Application by a corporation under section 18, act of March 3, 1891, should be accompanied by certificate of the proper officer of the State, showing that articles of incorporation have been filed in accordance with local requirements.

13-166

227. The admission to record of articles of incorporation, and the certificate of the proper officer in attestation of such fact, establishes the sufficiency of said articles under the statutes of the State, and fixes the status of an incorporation, as such, that applies for right of way under the act of March 3, 1891.

27-126

228. Application by a canal company under the act of March 3, 1891, can not be approved until presented in conformity with departmental regulations.

13-110

229. Maps or plats filed under the act of March 3, 1891, must be submitted in duplicate, and the map sent to the department must bear the certificate of the register that it is an exact copy of the map filed in the local office.

13-282

230. While the act of March 3, 1891, provides for the filing of maps showing the construction of canals, ditches, and reservoirs under section 2339, R. S., the provisions of that act do not operate to make the continued enjoyment of rights conferred by said section dependent upon the filing of such maps.

32-463

231. The provision in the act of March 3, 1891, requiring a map of location to be filed within 12 months after the location of a canal, ditch, or reservoir, if upon surveyed lands, or within 12 months after survey, if upon unsurveyed lands, is directory, with respect to the time so fixed, and not mandatory.

29-112

232. The certificate of the register should show that a true and correct duplicate map of survey is filed.

13-707; 14-28

233. An application for ditch and reservoir privileges should be accompanied by evidence as to the person authorized to make the survey; that the line of route and location as surveyed and mapped were duly adopted as of a certain date.

13-357

234. The certificate of the engineer as to the survey of the proposed line of route should definitely describe and locate the termini of said route.

13-166, 357

235. The certificates of the president and chief engineer of an irrigation company, attached to maps, should designate the termini of a pipe line along which right of way is claimed over public land.

19-23

236. The affidavit of the surveyor should show the facts as to the date of the survey, the distance, and termini, and that the survey is correctly shown by the map.

13-357

237. The map of a canal should definitely show the lines and width of said canal.

15-470

238. The map of a constructed canal may be accepted where in place of giving the width of the canal the area of the same in each subdivision is given.

15-577

239. The dates of the survey and definite location of a reservoir are not essential, where the map is not filed until after construction. 27-316

240. Slight variances between the line of survey and the actual water line of a proposed reservoir, do not require the rejection of the map, where it appears that such variances are due to the mountainous character of the land. 27-126

241. Survey of canal should show its width at places where the lines depart from the width established at the initial point. 13-707

242. In the survey of a canal its width and the course and distance of the line of route should be noted and duly shown. 14-30

243. Survey of, on unsurveyed land should be connected with Government surveys or with some well-defined natural monument. 14-516

244. In the survey of a ditch the subdivisional lines of sections should be laid down on the map and the field notes of survey accompany the same. 14-28, 30

245. In the survey of a ditch the termini should be definitely fixed, and at each point where the ditch crosses the lines of the public survey the distance to the nearest established corner of said survey should be noted on the map. 14-28

246. When the survey of a canal crosses section and quarter-section lines the distance to the nearest established corner of the public survey should be noted on the map. 13-707

247. Maps of survey filed under the act of 1891 must show the lines of each smallest legal subdivision affected, and should be drawn to a scale of not less than 2,000 feet to 1 inch. 13-166

248. A map of a ditch or reservoir drawn to a less scale than 2,000 feet to 1 inch may be accepted if not inconveniently large. 14-28

249. The survey of a reservoir may be mapped to the scale of 1,000 feet to 1 inch. 13-681

250. In the survey of canals and reservoirs the variation of the magnetic from the true meridian should be noted. 14-30

251. Where the boundary lines of a reservoir cross the lines of a public survey

the point of intersection should be marked on the ground and the distance therefrom to the nearest established corner outside of the reservoir noted on the map. 13-681

252. The survey of a reservoir should show the lines of the Government survey around the same, and the map should be prepared on a scale proportionate to the size of the reservoir. 16-264

253. In the survey of a reservoir the initial point of the survey should be fixed by reference to a corner of the public survey or some well-defined natural monument. 14-28, 516

254. In running the boundary line of a reservoir the points where it crosses the lines of the public survey should be marked by a stake or stone and the distance to an established corner outside the reservoir noted on the map. 14-28

255. The General Land Office may properly insist on compliance with the circular requirement that monuments shall be placed as reference points for public survey corners that will be destroyed in the construction of the reservoir, even though such requirement may have not been in force when the maps were filed. 19-256

256. Reservoirs should be so surveyed as to include only the land covered with water, as the right of occupancy is limited to such land and 50 feet of marginal land for use in construction and repairs. 14-30

257. For canals and reservoirs under the act of 1891 on unsurveyed land can not be approved. 13-660; 14-236; 18-573

258. A map showing the location of a canal over unsurveyed land in part will not be approved. 15-245

259. Will not be approved across lands formerly embraced within an Indian reservation until such lands have been surveyed. Survey of the exterior lines of said reservation does not remove the objection. 16-66

260. Map showing location of canal will not be approved where the initial and terminal points are on unsurveyed land and the line for the greater part traverses land in the same condition and the portion on unsurveyed land can not be used independently of the remainder. 16-118

261. For a canal that passes over surveyed and unsurveyed land may be approved for the part on surveyed land where such portion can be utilized independently of the remainder. 16-192

262. Though not approved for a canal over unsurveyed land under the act of 1891, priority of possession in the use of water thereon is protected by sections 2339 and 2340, R. S. 16-192

263. The easement conferred by the act of 1891 extends not only to the land occupied by the canal, but to a strip 50 feet in width on each side of the canal, the meander line being 50 feet from the high-water line. 15-472

264. Section 18 of the act of March 3, 1891, does not limit the size of the reservoirs therein provided for, but authorizes the approval of a right of way "to the extent of the ground occupied by the water of the reservoir," "and fifty feet on each side of the marginal limits thereof." 32-178

265. In approving an application the department does not determine the marginal width necessary for the construction and maintenance of the ditch. 16-425

266. The Secretary has no jurisdiction to act upon application under the act of March 3, 1891, unless it affirmatively appears that some portion of the public domain is affected thereby. 15-345

267. Application for canal purposes may be approved so far as it affects public land though the line for the greater part traverses land that does not belong to the public domain. 15-577

268. The right of an applicant for a reservoir site under the act of March 3, 1891, will not be defeated by an intervening adverse entry, if at the date when the map showing the location of said reservoir site is filed the lands included therein were subject to such appropriation. 28-402

269. For canal purposes can not be approved across land granted for school purposes. 13-357

270. Where the line of route passes through a school section it should be shown whether said section passed to the State or was excepted from the grant; and it should also appear whether the ditch or

reservoir passes through or embraces land within a Government reservation. 13-357

271. The provisions of sections 18 to 21, act of March 3, 1891, granting rights of way through the public lands for canals, ditches, and reservoirs, have no application to lands within the District of Alaska. 35-297

272. Section 4 of the act of February 1, 1905, granting rights of way for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals within and across the forest reserves of the United States, applies to and is operative in forest reserves in the District of Alaska. 40-426

273. The act of March 3, 1891, does not authorize the approval of an application for a canal, across an Indian reservation; nor will such right of way below said reservation be granted if the canal is dependent for its water supply upon the right of way asked for through the reservation. (See 27-421.) 26-381

274. For a ditch that traverses, among other lands, a military reservation, and also an Indian reservation, will not be approved as to any part where by the maintenance of said ditch the supply of water necessary for the proper use of said reservations will be impaired. 21-355

275. For canals and ditches not granted through Indian reservations by section 18, act of March 3, 1891. (See 27-421.) 14-265

276. The provisions of section 18, act of March 3, 1891, granting right of way "through the public lands and reservations of the United States" for irrigation purposes, include Indian reservations, subject to the condition that the location and construction of the ditch or canal shall not interfere with the proper occupation of such reservations by the Government for Indian purposes and uses. 27-421; 33-563

277. Section 18, act of March 3, 1891, provides for the granting of rights of way over the public lands and reservations of the United States; and where the lands sought are within an Indian reservation they are within the scope of the act, not-

withstanding they may have been allotted to individual Indians. 35-550

278. Through reservations is granted by section 18, act of March 3, 1891, but the proviso thereto requires all maps of location to be submitted for approval to the department having jurisdiction over the reservation involved. 13-165

279. The act respecting privileges for irrigation purposes is applicable to Sequoia National Park, subject to the condition that the right of way, if granted, shall not interfere with the proper occupation of the reservation by the Government. 20-253

280. Whenever, in his judgment, the granting of an application under the act of March 3, 1891, over a national forest or reservation, would interfere with the proper occupancy of the reservation by the Government, it is within the power of the Secretary to withhold his approval therefrom. 38-547

281. Prior to approval, the inchoate right acquired by an application for right of way over a national forest under the act of March 3, 1891, is subject to the power of Congress to deny the right by intervening legislation affecting the land. 38-548

282. Where the proposed location traverses a forest reservation the department should require a stipulation on the part of the applicant that no timber will be taken from the land within the reservation outside of the reservoir, or from land not occupied by the waterway. 21-330

283. The provisions of the act of March 3, 1891, conferring privileges for irrigation purposes over the public domain and reservations of the United States, do not contemplate the allowance of such rights over lands reserved by the Government for reservoir sites. 23-275

284. Application for a site under the act of 1891 in conflict with claims under the railway right of way act and the town-site laws should not be approved without opportunity given for objections to be presented. 15-468

285. The approval of a map of right of way under the nineteenth section of the act of March 3, 1891, does not vest in the applicant the title to the land covered by such

right, and the land may thereafter be disposed of by the Government subject to such right of way. 31-364

286. The Land Department is without authority to approve an application for right of way under the act of 1891 which conflicts to a material extent with a prior approved application under which vested rights have been acquired. 38-207

287. Upon approval by the department of an application under the act of March 3, 1891, jurisdiction is lost, and the department may not thereafter properly approve another application which conflicts to a material extent with the approved application. 38-493

288. The Land Department has jurisdiction to approve an application under the act of March 3, 1891, covering a tract included in a prior approval, subject to prior existing rights, but is not bound to do so; and where it appears that the enjoyment of the right sought depends upon the destruction of the prior right, the granting of the later right may be withheld until such prior approval is set aside or the applicant is shown to be entitled to make use of the right sought. 36-490

289. Upon approval of an application for a reservoir site under the act of March 3, 1891, the jurisdiction of the department is lost, and any subsequent action looking to cancellation or annulment of the right for any reason whatever must be by direct action for that purpose in the courts. 38-207

290. Where an application for right of way was inadvertently approved during the pendency and without consideration of a conflicting application under which superior rights are claimed, the department may recommend the institution of suit to cancel the approval and reacquire jurisdiction for the purpose of determining to which of the rival applicants the right of way should be awarded. 38-493

291. The five-year period fixed by the act of March 3, 1891, within which a reservoir under its provisions is required to be constructed to prevent forfeiture of the right of way, can not be extended by means of an amended application for the reservoir site. 38-207

292. Upon failure to construct within the five-year period, the Land Department may not, in the face of evidence showing that another is seeking to acquire the land for a legal purpose, waive the requirement of the statute with respect to forfeiture, but should recommend the institution of proceedings to have the right declared forfeited. 38-207

293. An application for a reservoir site should be accompanied by a showing reasonably demonstrating the feasibility of the contemplated irrigation scheme and the capability of the applicant to carry the project to a successful conclusion. 40-470

294. The filing of an application for a reservoir site under the act of March 3, 1891, following survey and definite location in the field, confers upon the applicant no such rights as will overcome the rights of an adverse claimant who commenced survey of a conflicting reservoir site prior to the initiation of any rights by the applicant and diligently prosecuted the same to completion. 38-338

295. The act of 1891 does not contemplate the appropriation for reservoir purposes of natural lakes that are already a source of water supply. 13-681

296. A natural lake can not be appropriated for a reservoir. 14-508

297. The departmental regulations of February 20, 1894, under certain conditions, recognize the right to appropriate natural lakes or rivers for reservoir purposes. 18-268

298. A reservoir site can not be secured under the act of 1891 by damming a river and overflowing the adjacent land. 13-682

299. The bed of a stream may be appropriated under the act of 1891 where it appears that no water is contained therein during the season when irrigation is most needed. *Penasco Reservoir case* distinguished. 15-468; 16-501

300. A natural ravine or creek bed that does not carry water sufficient to be appropriated under the laws of the State may be used for a reservoir and ditch, and an application for a right of way therefor approved under the act of March 3, 1891. 27-511

301. Site can not be acquired under the act of 1891 by damming a river and over-

flowing the adjacent land where said stream carries a strong volume of water through all seasons. (See 18-268.) 15-470

302. The department will not attempt to interfere with the control of water, or determine the rights of conflicting claimants thereto, except in so far as may be necessary to ascertain whether such *prima facie* right to the use of the water, or to store the same, has been shown as will entitle the applicant to utilize the grant for the purposes contemplated by the act. 26-520; 30-382

303. The provisions of the act of 1891 deal only with the right of way over the public lands to be used for the purposes of irrigation, leaving the disposition of the water to the State. 18-573

304. Questions involving the control and appropriation of the waters of a State can not be adjudicated by the department under an application for right-of-way privileges over the public land. 22-709

305. Where the Government has filed notice of appropriation and asserted its claim to the unappropriated waters of a stream, applications for rights of way in conflict with or detrimental to the Government project, when such rights are based upon appropriations made, or use attempted to be initiated, subsequent to the assertion of the claim of the Government, should not be allowed. 39-334

306. The Land Department is without jurisdiction to determine the question as to the right to water as between rival applicants for rights of way and reservoir sites. 37-152

307. Rights of way for reservoir sites under the act of March 3, 1891, may be acquired by actual occupancy and development on the ground; and a mere application and map, unless followed with reasonable diligence by actual development and use, is no bar to appropriation of the site by another who proceeds with diligence to development and utilization thereof. 39-27

308. The act of March 3, 1891, restricts the purpose for which the right of way therein granted may be used to that of irrigation; and maps of location will not be approved where it appears that the

right of way is desired for any other purpose than irrigation. 20-154;

21-63; 25-344; 28-474

309. The act of March 3, 1891, grants a right of way through public lands and reservations to any canal or ditch company "formed for the purpose of irrigation" only, and has no application to a company formed for other purposes.

32-452

310. Applications for rights of way under the act of March 3, 1891, and section 2 of the act of May 11, 1898, will not be allowed except upon a satisfactory showing that the right of way is desired for the primary purpose of irrigation.

37-78

311. A right of way under the act of March 3, 1891, may be acquired only by a company formed for the purpose of irrigation; but a right of way secured under that act may, under the act of May 11, 1898, be used for purposes of a public nature as subsidiary to the main purpose of irrigation.

38-302

312. The act of March 3, 1891, grants a right of way through public lands and reservations to any canal or ditch company "formed for the purpose of irrigation" only, and the amendatory act of May 11, 1898, permits the use of a right of way secured under the act of 1891 for "purposes of a public nature," but does not authorize the approval of an application under the act of 1891 where the use of the right of way is not desired for irrigation.

32-461

313. An application for right of way for a reservoir site under sections 18 to 21, act of March 3, 1891, by a company "formed for the purpose of irrigation," may be approved under said sections and section 2, act of May 11, 1898, notwithstanding the articles of incorporation of the company may permit it to also engage in the business of furnishing and using the water "for purposes of a public nature, and for the purposes of water transportation, domestic use, and development of power, as subsidiary to the main purpose of irrigation."

35-154

314. Approvals of applications for right of way under the act of March 3, 1891, as amended by the act of May 11, 1898, for primary purposes of irrigation, are sub-

ject to all valid existing rights and upon the express condition that the right of way be used for the main purpose of irrigation; that any electrical power or energy developed thereunder is to be primarily used for the purpose of irrigation; and any abandonment or violation of such use, or neglect to comply with the provisions of the law, will work a forfeiture which will be enforced by appropriate proceedings.

39-309

315. The approval by the Secretary of Agriculture of an application for right of way under the acts of March 3, 1891, and May 11, 1898, for a reservoir site within a forest reservation, does not pass the title to the land covered thereby, but is merely advisory to the Secretary of the Interior and subject to his paramount jurisdiction under said acts.

40-380

316. An application for right of way by a company claiming to own existing rights of way must be accompanied by a showing of the uses made of such rights of way, and intended to be made of the additional right of way applied for, sufficient to enable the department to determine whether the purposes of the company are properly within the intendment of the act of March 3, 1891, as amended by the act of May 11, 1898.

40-125

317. No company will hereafter be recognized as a beneficiary under the provisions of the act of March 3, 1891, granting rights of way over the public lands and reservations to canal and ditch companies organized for the purposes of irrigation, until the formal presentation of an application for a specific right of way.

40-125

318. Whether the United States has a prior, superior, and paramount claim to waters of the Rio Grande to the extent necessary to enable it to keep its treaty obligations with the Republic of Mexico with reference to the delivery of such waters is a question not within the competency of the Land Department to determine, and the Secretary of the Interior will not embarrass the decision of such question, nor the fulfilment of the Nation's obligations under such treaty, by approving applications for rights of way under the act of March 3, 1891, which rest upon the appropriation of such waters under

State laws and their proposed diversion to other and adverse uses. 39-104

319. An application under the act of March 3, 1891, can not be approved where the purpose of the proposed pipe line and reservoir is to afford an auxiliary to the waterworks of a city. The watering of gardens and lawns in a city during the summer season is not the irrigation contemplated by said act. 20-464

320. The grant of right-of-way privileges by the act of March 3, 1891, is restricted to purposes of irrigation; hence an application can not be approved under said act where the water is to be used in generating electricity. 18-573

321. The acts of March 3, 1891, and May 14, 1896, differ so widely in the character of the estate granted, as well as in the uses to which the right of way may be devoted, and the extent thereof, that an application can not properly be allowed on the two acts taken together; the permission must rest either upon one act or the other. 24-560

322. The act of March 3, 1891, granting rights of way for canals, ditches, and reservoirs and the act of May 14, 1896, granting similar rights for generating, manufacturing and distributing electric power, contemplate such destruction of timber along the line of any such right of way as results from the use and maintenance of the right. 32-178

323. An application for a canal and pipe line, under the act of May 14, 1896, will not be denied on the ground of a prior appropriation of the water, if it appears that the water can be used, and returned to the stream above the prior appropriator's intake, practically unimpaired in quality and quantity. 26-521; 30-383

324. The act of May 14, 1896, making a grant across public lands and forest reserves "together with the use of necessary ground, not exceeding forty acres," while restricting the area that may be thus used, does not limit such use to a single tract. 27-315

325. In passing upon applications under the acts of May 14, 1896, and February 15, 1901, the department will require a *prima facie* showing of right on the part of the applicant to appropriate water; but it is not the province of the department

to determine the validity of such appropriation. 32-144

326. The provision in the act of May 2, 1890, that the "public land strip" shall be opened to settlement under the "homestead laws," does not reserve said land from the operation of the act of January 13, 1897, authorizing the use of public lands for reservoir purposes. (Watering live stock.) 29-147

327. The act of January 13, 1897, requires that a reservoir constructed under its provisions shall be completed within two years from the date of the filing of the declaratory statement, and the Land Department is without authority to extend that period so as to defeat an intervening adverse claim. 38-175

328. The act of January 13, 1897, providing for use of public lands for construction of reservoirs for watering stock, contemplates the reservation of only so much land as may be necessary for the practical purposes for which the reservoir is established; and the Secretary of the Interior has the power at any time to reform the reservation and restore to settlement and entry all lands not necessary for the free use and enjoyment of the rights contemplated by the act. 40-559

329. Where a reservoir right of way has been approved, but the reservoir is not constructed within the statutory period, a transferee may be permitted to file a new map of location, to operate only upon such portions of the public lands as are free from any claims or rights at the date of the approval of said map; and in such a case the later application of another party for a right of way covering practically the same ground must be rejected. 27-585

330. The maps and papers may be delivered to the receiver of an irrigation company, for purposes of amendment, on due showing that he is acting under judicial authority. 26-154

331. Protests against the allowance of applications should not be acted upon independently of the merits of the application. 19-304

332. Persons who allege injury to their premises by reason of the subsequent allowance of right-of-way privileges, and

action thereunder, must seek redress in the courts. 19-304; 26-520

333. In case of an indemnifying bond furnished by an irrigation company, on application for a right of way across a forest reservation, where the surety is a company duly certified as authorized under the act of August 13, 1894, to act in such capacity, it is not necessary that such surety should furnish a statement as to its assets and liabilities. 27-315

334. All public lands west of the one-hundredth meridian taken up under allotment, sale, homestead, or other form of disposition, subsequent to the act of August 30, 1890, as to which there is no claim by reason of settlement, occupancy, or otherwise, prior to that date, are subject to the reservation provided by that act, to be expressed in the patent, for right of way for ditches or canals constructed by authority of the United States. 40-28

335. The provision in the act of August 30, 1890, that "in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States," applies only to entries under the public or general land laws. 32-147

336. Under the provision in the act of August 30, 1890, directing a reservation in all patents for lands west of the one-hundredth meridian for a "right of way thereon for ditches or canals constructed by authority of the United States," the Government has full authority to construct canals or ditches over any such lands in connection with reclamation projects. 36-482

337. The grant of a right of way to a railroad under the act of March 3, 1875, after the passage of the act of August 30, 1890, is burdened with the reservation for right of way for canals and ditches provided by the latter act, which right of way may be utilized by the Government without compensation, except for actual loss or damage, provided such use will not impair or defeat the use of the railroad

right of way for the legitimate corporate purposes of the company. 36-482

338. Where application is made for right of way for a reservoir under sections 18 to 21, act of March 3, 1891, and it appears that the beneficiaries under a prior, similar, approved right of way embracing the same land have failed to comply with the requirements of the law, the department, upon proper application and the execution of a good and sufficient bond to indemnify the United States against liability for costs, will request the Department of Justice to permit the use of the name of the United States in a suit by the present applicant to have the approved right of way declared forfeited. 33-469

339. For the purpose of carrying out the provisions of the act of June 17, 1902, the Government may avail itself of the privileges conferred by the act of March 3, 1891, granting the right of way through the public lands and reservations of the United States for canals, ditches, and reservoirs for irrigation purposes, to the same extent that individuals, corporations, or associations of individuals, may exercise such privileges, and subject to the same conditions and limitations. 33-563

340. No rights are acquired by an application under the act of February 15, 1901, prior to approval thereof by the Secretary. 32-597

341. Exclusive occupation or use of a canyon or defile will not be permitted under an approval by the department of a right of way under the act of February 15, 1901; but the expense incident to any change or readjustment enabling use by a subsequent applicant must be borne by him, and the approval of the subsequent application will be so conditioned. 35-637

342. The use of rights of way over public lands within reservations of the United States for the purposes contemplated by either the act of February 15, 1901, or the act of June 17, 1902, will not be permitted if such use is incompatible with the public interest; and if at any time the public interest is jeopardized by the use of such rights of way after they have been granted, they may be revoked by the Secretary of the Interior. 33-389

343. The term "public interest" as used in the act of February 15, 1901, authorizing the Secretary to grant right-of-way privileges through the Yosemite and other national parks, for reservoir sites, etc., if "not incompatible with the public interest," contemplates not merely the public interest in the Yosemite National Park for use as a park only, but the broader public interest which requires such reservoir sites to be utilized for the highest good to the greatest number. 36-409

344. Under the act of February 15, 1901, the Secretary is authorized to permit the utilization of reservoir sites in the Yosemite National Park in connection with a municipal water-supply system for the city of San Francisco. 36-409

345. A company organized chiefly for the purpose of generating and distributing power is not within the purview of the act of March 3, 1891; and where an application by such a company for right of way under that act has been approved, for lands now within a national forest, the company may be permitted to relinquish all right under such approval and amend its application to bring it within the act of February 15, 1901, failing to do which, action should be taken by the Land Department with a view to revocation of the approval. 38-302

346. Regulations of March 1, 1905, under section 4, act of February 1, 1905, relative to rights of way within forest reserves for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals. 33-451

347. The rights of way granted by the act of February 1, 1905, are limited to municipal and mining purposes, including the milling and reduction of ores, and an application under that act should not be allowed where it appears that the chief purpose for which the right is desired is the generation of power for commercial use and that its utilization for mining operations is merely incidental to such purpose. 37-30

348. Directions given relative to the disposition of applications for rights of way involving the use of water in the territory indicated in the act of June 30, 1906, authorizing and directing the Secretary of the Interior to sell to the city of

Los Angeles, Cal., certain lands in that State. 35-465

349. The fact that there may be outstanding claims in conflict with a right of way applied for under the provisions of the act of June 30, 1906, will not prevent the allowance of the application and approval of the maps subject to superior rights. 37-152

VI. Power Purposes.

350. Instructions of April 14, 1911, under act of March 4, 1911, respecting rights of way for electrical power, telegraph, and telephone lines. 40-30

351. Regulations of January 29, 1910, requiring stipulation from railroad companies applying for rights of way involving power sites. (See 39-89.) 38-405

352. Instructions of January 29, 1910, 38 L. D., 405, requiring applicants for railroad rights of way over public lands upon which are possible power sites to file, as a prerequisite to approval thereof, a stipulation that applicant will, upon proper request, elevate or move its tracks and roadbed in event of withdrawal for power purposes of any portion of the public lands over which the right of way passes, vacated and annulled. 39-89

353. Where an application for railroad right of way covers public lands upon which are possible power sites, examination should be had by the Land Department, before acting upon the application, to determine whether the lands may be utilized to the best advantage for power sites or other power purposes; and if it appear that the public good resultant from withholding the land for power development is disproportionate to the benefits to be derived from construction of the railroad, the application should be approved, even though it might interfere with development of the power; but if, on the other hand, the power possibilities are sufficient to justify utilization of the public lands for such purposes to the exclusion of other uses which may conflict, the lands should be withdrawn and the application rejected, unless the line of road can be so located as not to interfere or conflict with the use of the land for power purposes. 39-86

354. Under the rule laid down in departmental decision in Continental Tunnel Railway Co. (39 L. D., 86), the power-site stipulation set forth in the regulations of January 29, 1910 (38 L. D., 405), will no longer be required of applicants for right of way; but where an application accompanied by such stipulation has been approved, without a preliminary investigation having been made, the stipulation will not be canceled or surrendered unless the company will relinquish all rights it may have acquired under the approval, to the end that it may be determined whether the right of way is so situated with reference to water courses susceptible of power development as to require the withdrawal of the land involved for power purposes, and whether use of the land is essential to development of the power.

39-209

355. The approval of an application for a right of way and necessary ground upon public land, under the act of May 14, 1896, for the purpose of generating, manufacturing, or distributing electric power, does not amount to a reservation or appropriation of the land embraced in the application, so as to take it out of the operation of the public-land laws; and the claimant under such approved application is in no position to object to the disposal of the lands by the Government.

31-360

356. The rights of way granted by the act of February 1, 1905, are limited to municipal and mining purposes, including the milling and reduction of ores, and an application under that act should not be allowed where it appears that the chief purpose for which the right is desired is the generation of power for commercial use and that its utilization for mining operations is merely incidental to such purpose.

37-80

357. A company organized chiefly for the purpose of generating and distributing power is not within the purview of the act of March 3, 1891; and where an application by such a company for right of way under that act has been approved, for lands now within a national forest, the company may be permitted to relinquish all right under such approval and amend its application to bring it within the act of February 15, 1901, failing to do which,

action should be taken by the Land Department with a view to revocation of the approval.

38-302

358. Where right of way over lands in an Indian reservation is sought under the act of March 2, 1899, examination should be made to ascertain whether the lands over which the right of way passes are so situated with reference to water courses susceptible of power development as to justify use of the land for power purposes, and if use for such purpose be found necessary, it should be ascertained whether the right of way as located, both as to alignment and grade, will interfere with development of power; and, if so, applicant should be advised and required to change its line, provided it can be so located as not to interfere with use of the land for power purposes; and, in case the lands have been withdrawn for power purposes, appropriate recommendation made to the President, to the end that the application be approved; and, should applicant refuse to make such change, the application should be rejected.

39-175

VII. Pipe Lines.

359. Regulations of December 23, 1896, June 27, 1900, September 28, 1905, and June 6, 1908, under the act of May 21, 1896, governing rights of way for oil pipe lines in Colorado and Wyoming.

23-521;
27-209; 30-335; 34-223; 36-576

360. Regulations of March 1, 1905, under section 4 of act of February 1, 1905, concerning rights of way within forest reserves for dams, reservoirs, pipes, etc.

33-451

361. Section 4 of the act of February 1, 1905, applies to forest reserves in Alaska.

40-126

362. Instructions of May 21, 1910, under act of April 12, 1910, concerning rights of way for pipe lines in Arkansas.

38-597

RIPARIAN RIGHTS.

See ACCRETION; INDIAN LANDS, 139; ISLAND; LAKE; PUBLIC LAND, 4-6; SURVEY, 98-121, 213-252.

1. Land formed between the meander and shore line of Lake Michigan, through the acts of persons or corporations, is

not the property of the Government, or subject to the jurisdiction thereof, under the public land laws. 21-131

2. Land lying within the banks of a meandered stream, and forming part of the bed thereof as surveyed, but subsequently left dry by a change in the channel thereof, can not be entered under the homestead law, where patents have issued for the adjacent lands. 21-429

3. Of an Indian allottee, extends to the middle of a nonnavigable meandered lake. 14-156

4. The control and right to dispose of public lands lying under a navigable stream, that forms the boundary of a State, and within the limits thereof, passes from the Government of the State on its admission to the Union, and if a sudden change occurs thereafter in the course of such stream, the reliction lying within said State is not the property of the United States. 28-124

5. Upon the admission of a State into the Union it acquires in its sovereign capacity the right to all the soil under navigable rivers, subject to the power of Congress to regulate commerce among the States and with foreign nations, and all lands that may afterwards form upon the beds of such streams become the property of the sovereign State, or of the proprietor of the shore lands, in virtue of his riparian right, according to the law of the State in which the land is situated. 34-423

6. Purchasers or grantees of meandered subdivisions, bordering upon a body of water, take title thereto with all of the incidents of ownership, among which is that of a right to relictions. This right pertains to the ownership of lands bounded by a water line, without reference to the character of the land, and hence exists in the case of title acquired under the swamp act. 28-444

RIVER.

See SURVEY, 138-139.

1. When adopted as the boundary of a State, sudden changes in the channel do not affect the boundary line as originally established. 24-372

SALINE LAND AND SALT SPRINGS.

See MINERAL LAND, 37; RESERVATION, 39-42; SCHOOL LAND, 112; STATES AND TERRITORIES, 87-88, 133-134, 141.

1. Circular of February 13, 1901, under act of January 31, 1901. 31-131

2. Circular of November 14, 1901, requiring nonsaline affidavit in case of application to enter nonmineral land. 31-131

3. Circular relative to nonsaline affidavits to be required in applications to enter public lands under the homestead and other laws providing for the disposal of nonmineral lands in States and Territories excluded by statute from the operation of the general mining laws, approved, and directions given for the amendment of the regular nonmineral affidavit by inserting therein a nonsaline clause. 31-130

4. Saline lands not expressly reserved by law or order, but merely by markings on the official plats, are subject to agricultural claim on proof of nonsaline character, and the claim relates back to date of settlement or filing. 2-847

5. The failure of the plats to show the saline character does not subject the land to entry, for the statute reserves all salines, whether marked on the plat or not. 2-851

6. No authority for the disposal of, except under the act of January 12, 1877, and said act is not applicable to the Territory of Utah. 7-549

7. There is no law authorizing the disposal of, except the act of January 12, 1877, and said act is not applicable to the Territory of Oklahoma. 27-515

8. The settled policy of the Government in the disposition of salt lands has been and is to reserve the same from general disposal. 16-597

9. Until the act of January 31, 1901, the policy was to reserve saline lands from disposition under any of the public land laws, whether relating to agricultural or mineral lands, except as provided by the act of January 12, 1877. 31-389

10. Deposits of rock salt are saline lands and not subject to entry under the statutes authorizing the disposal of mineral lands. 14-597

11. Land chiefly valuable for its salt deposits is not subject to entry as a placer mine. 7-549

12. May not be appropriated under the desert-land law. 20-299

13. In the grant of salt springs to the several States the phrase, "the land reserved for the use of the same," means the section including each salt spring. 21-320

14. The department is without authority to withdraw from settlement and entry lands for the benefit of a State as necessary and proper for the working of salt springs that are not in use by the State. 21-320

15. Lands more valuable for saline deposits than for agricultural purposes are excepted from grant to Southern Pacific Railway Company. 35-149

SAN BERNARDINO VALLEY.

1. Regulations of April 7, 1909, under act of February 20, 1909, relating to conservation of waters. 37-575

SAND.

See HOMESTEAD, 155; MINERAL LAND, 48.

SANDSTONE.

See HOMESTEAD, 131; MINERAL LAND, 47-56; MINING CLAIM, 846-857.

SCHOOL LAND.

I. Generally.

II. Indemnity.

I. Generally.

1. Instructions of May 15, 1901, relating to final proof notice on school lands. 30-607

2. Regulations governing selections under grants for educational and other purposes. 35-537; 38-611

3. Circular of June 21, 1905, relative to notice to the State of the allowance of entries in school sections, based upon settlement prior to survey. 33-638

4. Circular of April 30, 1907, relative to notice to State of entries based on settlement on school land prior to survey. 35-581

5. The authority of the Secretary of the Treasury in the matter of, conferred by the act of May 20, 1826, was transferred to the Secretary of the Interior by the act organizing the Interior Department. 24-106

6. The local officers may properly give such information as is shown by the records of their office, as to whether a given school section has been returned as mineral or nonmineral, or whether any portion thereof is or is not included in a homestead or other entry, etc., but it is not competent or proper for them to undertake to state in a manner which may be erroneously accepted as a certification or authorized statement, that such section has or has not passed to the State. 31-212

7. Reservation of lands to a Territory for the benefit of schools is not a grant, but an act with a view to a grant, the Government in the meantime retaining control of the land (Wyoming). 1-632; 6-71

8. An act reserving lands in a Territory (Wyoming) has the same force, so far as the reservation goes, as a grant for the same purpose to a State. 5-216; 8-493

9. The act of May 2, 1890, reserving sections 16 and 36 in the Territory of Oklahoma, did not make a grant, but a reservation for a future grant, which reservation included both sections in place and lieu selections where such selections were made in accordance with law and are of the character of land appropriated for that purpose. 30-244

10. Land known to be mineral at the date of admission of the State is excepted from the grant of school lands (Washington). 18-199

11. Known to be mineral at date of survey do not pass under the grant. 3-233; 4-75; 5-696; 6-412; 7-459; 9-408

12. Title passes to the State at the time the grant takes effect, without patent or certificate, and to except land therefrom on account of coal, the existence of such mineral in paying quantities must be shown and that such fact was known when the grant took effect. 14-681

13. A grant of lands for school purposes does not carry lands known to be chiefly

valuable for mineral at the time when the State's right would attach, if at all.

32-117

14. A mineral return by the surveyor general does not establish the character of lands as chiefly valuable for mineral, and can not of itself operate to take lands out of the grant to the State, as mineral lands; this can only be done by proof clearly showing that the lands were, at the time when the right of the State would have attached, known to contain valuable deposits of mineral, and to be chiefly valuable on account of such deposits. 32-117

15. The title of the State vests, if at all, at the date of survey, and if the land is in fact mineral, though not then known to be such, the subsequent discovery of its mineral character will not affect the title of the State. 6-412; 9-408; 24-14

16. Outcropping surface veins of coal on a school section are not sufficient, in the absence of evidence as to the actual value of the deposit, to establish the known mineral character of the land and except it from the operation of the school grant. 22-510

17. Grant will not take effect on land covered by a placer entry of land, chiefly valuable for building stone, allowed under departmental rulings. 21-327

18. The State (Colorado) entitled to sections 16 and 36 if not known to contain mineral when the survey was approved; and the discovery of mineral after approval of the survey will not defeat the title of the State. 7-459

19. Mineral applicant for lands in section 16 (Colorado) may submit proof, after due notice to the State, that the land was of known mineral character prior to and at the date when the State was admitted to the Union. 12-604

20. Land known to contain coal prior to admission of the State to the Union is excepted from the operation of the school grant (Montana). 23-116

21. In determining whether land is excepted from the grant to California on account of its mineral character the status of the tract at date of survey is the subject of inquiry. 15-273

22. The grant of school lands to the State of Utah became operative on its admission to the Union, and lands then of

known mineral character did not pass to the State, though not in terms reserved from said grant. 27-53

23. A mineral location, made prior to the admission of the State of Utah into the Union, was not of itself sufficient to establish the mineral character of the land located so as to defeat the grant to the State for school purposes; but where the State was specially notified of the pendency of an application for patent under such location, and made no objection by way of protest or otherwise to the allowance of the mineral entry, it is bound by the record made upon such application, and a hearing for the purpose of determining the character of the land is unnecessary. 33-37

24. The act of Congress providing for the admission of Nevada as a State and for a grant of, did not pass title to lands of known mineral character, though said grant does not in terms except such lands therefrom. 15-259

25. Land chiefly valuable for ordinary building stone is not excepted from the grant to South Dakota. 16-263

26. The grant to the State of South Dakota for school purposes, by the act of February 22, 1889, took effect on admission of the State into the Union, as to lands identified by survey, but as to such of the indicated sections as had not been surveyed at that date, the right of the State does not attach until identified by survey, and if at the time of survey they are known to be mineral, they are excepted from the grant. 34-485, 717

27. The mining laws have no application to sections 16 and 36 in the Cherokee Outlet, reserved to the Territory of Oklahoma and granted to the future State, for school purposes. 35-113

28. Section 8, act of June 16, 1906, making a grant to the future State of Oklahoma for various educational institutions, reserves and grants to the State not only the sections 13 theretofore reserved for such use, but also all sections 13 of the lands theretofore opened remaining undisposed of at the date of said act, as well as all sections 13 of lands thereafter to be opened. 35-348

29. Where a mineral entry has been allowed on, the protest of the State will not

be considered with a view to a hearing in the absence of a definite allegation that the land was in fact not mineral land or known to be such at the date the school grant attached. 23-313

30. A homestead claimant for land within a school section will not be heard to say that such land is excepted from the grant to the State by reason of its status under the mining laws at the date when the grant became operative; for, if in fact said land is not mineral, it passed to the State, and if mineral it is excluded from appropriation under the homestead law. 27-289

31. The existence of a placer location within a school section, or the pendency of an application for a placer patent therefor at the date when the grant of school lands becomes effective, will not operate to except such land from the grant to the State, if in fact said land is not mineral in character. 27-289

32. Prior to the approval of a school indemnity selection the land included therein, if mineral in character, is open to exploration and purchase under the mining laws of the United States. 27-411

33. A partial survey declared final, showing all or part of a school section within a grant, is the final survey contemplated in section 6 of the act of July 23, 1866. 3-306

34. Can not be regarded as identified by survey so as to exclude settlement where a resurvey of the land is found necessary. 14-291

35. Title does not pass by an irregular survey apparently inaccurate and subsequently set aside (California). 7-459

36. Settlement upon, when the grant takes effect, defeats the claim of the State. 3-229

37. On which settlement or cultivation was found at survey did not pass to the State (California). 1-338, 403

38. Settlement prior to survey excludes the land from the reservation for school purposes; but a purchaser after survey from such settler acquires no right against the State. 10-348

39. The right of settler prior to survey is personal and can not inure to the benefit of another. 1-103;

4-169; 5-408; 10-263, 419

40. A purchase after survey of the possessory right and improvements of one who settles prior to survey confers no right as against the State. 8-495; 9-554; 13-434; 24-581

41. If one who has settled prior to survey abandons his claim, the fact of such settlement can not be set up by a third party to defeat the title of the State. 9-403

42. A settlement under the donation law prior to survey does not except the land from the operation of the grant, where after survey the settler abandons his claim without asserting any right thereto before the Land Department. 28-366

43. Settled on at survey and subsequently abandoned vests in the State as of the date of survey. 1-403; 6-71, 439

44. Preemptor alleging settlement before survey allowed to submit final proof though he had failed to file for the land within the statutory period. 5-14

45. A preemption settlement prior to survey initiates a right that is not defeated by failure to make final proof within the statutory period where the State waives its claim to the land involved. 20-52

46. Settler prior to survey claiming as a preemptor must assert his claim within the legal period or the right of the State will take effect as of the date of survey (Colorado). 1-630

47. Failure of settler before survey to assert his claim within statutory period does not inure to the benefit of the reservation (Utah). 1-632

48. Settlement right on lands reserved for school purposes, acquired prior to survey, is not defeated by failure to establish residence for a term of years after settlement and survey where during such period valuable improvements are made and residence established thereafter. 14-213

49. Intent of legislation for Washington Territory in line with the general law with respect to settlement at survey. 6-74

50. Under the act of March 2, 1853, occupancy prior to survey by actual settlers operates to exclude from the reserva-

tion only such parts of sections 16 and 36 as are included within such occupancy.

13-382

51. The protection extended by the act of February 26, 1859, is limited to those who prior to the survey made settlement with a view to preemption.

9-554

52. Settlement prior to survey by one who has exhausted his preemptive right and claims as a homesteader does not defeat the reservation if the survey is made prior to the act of May 14, 1880.

11-527

53. By section 11, act of February 22, 1889, all lands granted by said act for school purposes are reserved whether surveyed or unsurveyed, from preemption, homestead, or other entry. The provisions of the later act of February 28, 1891, amendatory of sections 2275 and 2276, R. S., protecting settlement rights acquired prior to survey, are inapplicable to a desert-land entry (Mont.).

29-695

54. Under its grant by the act of February 22, 1889, the State of Montana is entitled to sections 16 and 36 within the former reservation of the Gros Ventres, where such lands have not been appropriated by *bona fide* settlers prior to identification by survey.

33-181

55. The title of the State to sections 16 and 36, by virtue of the grant by the act of February 22, 1889, is not affected by inclusion of the lands within a forest reserve prior to survey; but the State may, if it does not desire to await termination of the forest reserve, select other lands in lieu of these included therein, and approval of such indemnity selections will operate as a complete extinguishment of all title in the State to the lands in place made the basis therefor.

35-158

56. If the Black Hills National Forest is a permanent reservation within the meaning of section 19, act of February 22, 1889, sections 16 and 36 therein are by the express terms of said act excepted from the grant for school purposes; and if only a temporary reservation, the title of the State under its grant will not attach to the sections 16 and 36 therein so long as the reservation exists, in view of the fact that the lands were unsurveyed at the time the reservation was established. During the continuance of the

reservation, therefore, lands in sections 16 and 36 therein may be administered by the Forest Service in all respects as other lands in the reservation.

37-470

57. Settlers under act of 1853 should submit final proof within reasonable time after survey.

3-233

58. Settlement after actual survey in the field confers no right upon the settler in the event of the final approval of the survey.

21-410

59. Claim of homesteader where settlement was made after survey sent to the board of equitable adjudication. (See 5-409.)

3-383

60. Settlers on Territorial after survey can not be authorized by the department to remain in occupancy until the lands are subject to disposal by the State.

12-183

61. Though embraced in a private claim, it will pass under the grant to the State if in fact "not sold or otherwise disposed of by any act of Congress" when the grant became effective.

9-553

62. The lines of the public survey may be extended or protracted over a confirmed private-land claim for the purpose of ascertaining the amount of school land lost to the State by reason of section 16 being included within the limits of such claim.

30-187

63. Order of March 24, 1885, suspending action on mineral applications for school lands, revoked.

4-531

64. Circular of November 16, 1888, with respect to Wyoming school lands.

7-585

65. Rights of a State under the grant controlled as to acreage by the returns of the surveyor.

17-88

66. Irregularity in the form and place of section 16 arising from the survey of the township will not defeat the grant.

8-560

67. It is the number of townships, or fractional townships, within a State that determines the extent or measure of the grant for school purposes; hence when it is found that the State has received for each township the designated sections, or an equal quantity in lieu thereof, or for the fractional quantity due, no mere irregularity in the matter of adjustment is material as between the State and the United States.

29-127

68. No authority except in Congress to dispose of lands reserved for the use of schools. 9-333

69. Until so authorized by Congress, neither the department nor the territorial Government of Arizona has the power to dedicate for use in connection with an irrigation project under the act of June 17, 1902, lands in said Territory which, by section 2, act of February 2, 1863, have been reserved for school purposes. 32-604

70. A legislative reservation of, not defeated by a subsequent Executive reservation of the land for military purposes (Michigan). 8-560

71. Fee to the school sections within the Menominee Reservation passed to the State (Wisconsin), subject to the Indian occupancy, which can not be disturbed by the State nor its assignee. 12-176

72. The provision in the act of August 23, 1894, that lands within abandoned military reservations restored for disposal under said act shall be subject to entry by actual settlers, is a congressional disposition of said lands that takes them out of the operation of the school grant, if it had not attached prior to the establishment of the reservation. 26-87

73. The proviso to section 6, act of July 16, 1894, admitting Utah to the Union, does not take the grant to said States out of the operation of the general rule as to the time when said grant attaches to the specific sections, or limit the authority of Congress to so provide for the disposal of reserved lands that on their restoration the right of the State to the specific sections may be defeated. (See 29-418.) 26-87

74. The reservation of sections 16 and 36 for school purposes in the Territory of Utah, under the act of September 9, 1850, "when the lands in the said Territory shall be surveyed . . . preparatory to bringing the same into market," does not become effective as to lands in said sections on the survey of only two of the exterior lines thereof. 30-314

75. Lands "sold or otherwise disposed of" at the time of the admission of Utah into the Union are excepted from the school grant to said State; and where prior to said date a desert-land filing has been properly allowed and the first pay-

ment on the land accepted, the claimant thereby acquires such a right to complete his purchase and perfect title by further compliance with the desert-land act that the right of the State, if any under its school grant, is subject to the prior right under said filing. 30-314

76. The acts of July 5, 1884, and August 23, 1894, relative to the method in which lands in abandoned military reservations should be disposed of, did not in themselves amount to a disposition of said lands, and hence bring them within the exception of lands "sold or otherwise disposed of" contained in the grant of, to the State of Utah. 29-418

77. The grant made to the future State of Utah by section 6, act of July 16, 1894, for the support of common schools, did not become effective until the admission of the State into the Union. 33-223

78. The grant of, to the State of Utah became operative on the admission of the State into the Union; and where at such date a portion of a school section is embraced within a subsisting timber-culture entry made prior to the date of the granting act, the State takes title to such land subject only to the entryman's right to perfect title under his entry, and if said entry is subsequently canceled, the title of the State becomes complete as of the date of admission, to the exclusion of any preference right on the part of a contestant who secures such cancellation. 29-623

79. By reason of the legislation affecting the unallotted lands in the Uintah Indian Reservation, which amounts to an appropriation thereof, no claim on the part of the State (Utah) to any portion thereof will be recognized, either under its grant of specific sections in place in support of common schools, or under the provisions of the act of March 2, 1895. 33-610

80. Is not lost to a State by an executive order creating an Indian reservation where sections 16 and 36 are expressly excepted therefrom, nor does the fact that such sections are within the boundaries of said reservation authorize lieu selections under the act of February 28, 1891. 17-71

81. The "contingent location" of lands in sections 16, in Mississippi, under executive order issued October 13, 1834, did not

operate to reserve said lands so as to prevent title vesting in the State under the acts of Congress relating to school lands in said State. 30-230

82. Lands selected for educational purposes are reserved from the operation of the timber land act of June 3, 1878. 6-696

83. Section 16 in each township in the State of Louisiana, reserved for the support of schools by section 10 of the act of March 3, 1811, did not pass under the swamp-land grants to said State by the acts of March 2, 1849, and September 28, 1850. 30-276

84. The department has no authority to permit land reserved for the use of schools to be used for cemetery purposes. 9-333

85. The department has no authority to sanction the use or lease of, for townsite purposes. 13-640

86. Leased for agricultural and grazing purposes, under the regulations and form of lease required by the department can not be sublet for the purpose of establishing a brickyard thereon. 21-141

87. In a lease of, the intention of the parties as to the time from which the agreement shall become operative should control, if such intent is apparent by the terms of the lease. (New Mexico.) 29-364

88. The reservation created by section 5, act of July 3, 1890, of lands granted to Idaho for educational purposes, has no application to a grant of lands in quantity, which can become operative only by selection. 37-135

89. Where at the date of the act of July 3, 1890, a portion of a section 16 or 36 was occupied by townsite settlement initiated prior to survey, the grant of sections 16 and 36 made to the State for school purposes by section 4 of that act will not prevent the townsite settlement being carried to entry. 37-455

90. May not be taken for townsite purposes in the absence of settlement rights acquired prior to the public survey. 13-327

91. Sections 16 and 36 embraced within the lands excluded from the Fort Sanders Reservation are reserved for school purposes and not subject to entry. 7-548

92. Sections 16 and 36 within an abandoned military reservation are not sub-

ject to a subsequent school grant, but must be disposed of under provisions of July 5, 1884. 14-527

93. Applications to file coal declaratory statements may be received for sections 16 and 36, with due opportunity for the State (Colorado) to be heard. (See 9-408.) 7-490

94. The Territory (Wyoming) can not control or make disposition of lands reserved for school purposes. 4-390

95. The surveyor general of California is the authorized agent of that State in the adjustment of the school grant. 6-403

96. Possession entered into after survey under territorial authority not legal. 4-390

97. Under certain acts Arsenal Island was surveyed and set apart to the board of St. Louis public schools and the selection approved; under the law (Sec. 2449, R. S.) the title of the United States was by the approval fully vested in the public schools and their grantees. 2-457

98. By section 2, act of April 28, 1870, extending the jurisdiction of the State of Nebraska over the territory added thereto by the provisions of said act, Congress conferred upon said State all the rights incident to the original enabling act, and it therefore follows that the reserved school sections embraced within such added territory passed to said State by such transfer of jurisdiction, though the statute does not in terms make an express grant thereof to the State. 23-348

99. On the approval of a survey made after the admission of the State of Nebraska to the Union the title to the school sections vested in the State, and the subsequent resurvey of Grant and Hooker Counties, authorized by act of August 9, 1894, did not defeat such title, though by said resurvey the designation of such sections by number may have been changed. 28-264

100. Lands in section 16 or 36 in the State of Washington which at the date of survey were in the possession and occupation of an Indian living apart from his tribe, and improved by him, and for which application for allotment has been made by the Indian occupant under section 4, act of February 8, 1887, are "otherwise disposed of by or under the authority of an act of Congress," within the meaning

of that term as employed in section 10, act of February 22, 1889, making a grant to the State of sections 16 and 36 in each township in support of common schools, and are therefore excepted from the grant. 33-454

101. Grant of, compared with the swamp grant and a similar rule of construction held applicable. 8-310

102. The department is without authority to determine whether a State in its disposition of, has done so in the manner provided by statute. 21-365

103. The act of March 3, 1849, reserving lands in the Territory of Minnesota for school purposes, was not irrevocable by Congress. 28-374

104. The proposal made by the United States in the act of February 26, 1857, to grant to the State of Minnesota, when admitted into the Union, sections 16 and 36, for school purposes, was modified by joint resolution of March 3, 1857, and it was the proposal, as so modified, that was accepted in the State constitution adopted October 13, 1857. 28-374

105. Under the compact effected by the modified proposal of March 3, 1857, and its acceptance, the status of said sections at the time of survey was made the criterion in determining whether the State became entitled to the specific sections, or to other equivalent lands as indemnity. (Minnesota.) 28-374

106. The lands known as Red Lake Reservation in Minnesota, were unsurveyed at the passage of the act of January 14, 1889, and by the terms of said act, and the agreement with the Indians thereunder, were set apart to be used in raising a fund for the benefit of the Indians, and by such appropriation were "reserved for public uses," within the meaning of the joint resolution of March 3, 1857, prior to survey; sections 16 and 36 in said reservation, therefore, did not pass to the State under the school grant, but other equivalent unappropriated lands may be selected in lieu thereof. 28-374

107. The character of school sections in California, whether mineral or nonmineral, is not to be wholly determined by the surveyor general's return, nor is such return very high or persuasive evidence of

the character of the lands when it is once drawn in question. 31-212

108. Until laws and regulations for the leasing of school lands in Oklahoma are prescribed by the legislature thereof, the authority and duty of deciding all questions in relation thereto are, by act of May 4, 1894, cast upon a board composed of the governor, secretary, and superintendent of public instruction of said Territory, and the assent of the department is not necessary to give validity to any action that may be taken by said board in relation to the leasing of such lands. 31-269

109. The question of leasing school lands in New Mexico under territorial laws is one exclusively for consideration of the board of public lands of said Territory. 32-137

110. The grant of sections 16 and 36 made to New Mexico for school purposes by the act of June 21, 1898, is a grant *in praesenti*, and any question as to the authority of the Territory to grant rights of way for railroads across any such lands is one for determination by the officers of the Territory and not by the Secretary of the Interior. 34-548

111. The grant made by section 1 of the act of June 21, 1898, is a grant *in praesenti*, and upon approval of said act the absolute title in fee to all sections 16 and 36 in New Mexico which were then identified by the public surveys became immediately vested in said Territory, in so far as such sections embraced lands not known to be otherwise than of the character subject to the grant. 31-389

112. Land in a surveyed section numbered 16 or 36 in New Mexico known to be saline in character at the date of the act of June 21, 1898, did not pass to the Territory under the grant of said sections for the support of common schools made by section 1 of said act, but passed to the Territory under the grant of saline lands by section 3 thereof. Land in a surveyed section numbered 16 or 36 not known to be saline in character at the date of said act passed to the Territory under the grant made by section 1. 31-389

113. The act of March 20, 1901, of the Legislative Assembly of New Mexico, amending section 12 of the Territorial act

of March 16, 1899, by striking out the paragraph thereof which provides that all lands to be leased under section 10 of the act of Congress of June 21, 1898, shall first be appraised, is not in terms or by necessary implication retroactive; hence leases executed under said section 10 while said section 12 as originally enacted was in force can not be approved without proof of the appraisal of the lands covered thereby prior to their execution. 31-188

114. The "lands that may be leased only," referred to in section 10 of the act of June 21, 1898, embraced sections 16 and 36, granted for the use of common schools, and the "lands to the extent of two townships in quantity" granted for university purposes. There is no authority in said act to sell any of these lands or the standing timber thereon. 31-188

115. Of the lands ceded to the United States by the Wichita and affiliated bands of Indians under agreement ratified by the act of March 2, 1895, sections 16 and 36, 13 and 33, reserved for school purposes, are by the provisions of said act made subject to the operation of the mining laws; but the like numbered sections reserved for school purposes of the lands ceded by the Comanche, Kiowa, and Apache Indians under agreement ratified by the act of June 6, 1900, are not subject to the operation of such laws. 32-95

116. Sections 16, 36, 13, and 33 of the lands ceded by the Comanche, Kiowa, and Apache Indians under agreement ratified by the act of June 6, 1900, reserved for school and other purposes, are not subject to the operation of the mining laws. 34-54

117. Section 16, now designated in the official resurvey as tract 107, in T. 16 S., R. 12 E., S. B. M., as fixed by the private survey known as the "Imperial Extension Survey," is accepted and respected by the Land Department as the tract which passed to the State of California under its school grant of section 16 in that township, without prejudice to the rights of conflicting claimants as to the portions of their claims not in conflict with said tract 107. 40-562

II. Indemnity.

- (a) Generally.
- (b) Alabama.
- (c) California.
- (d) Colorado.

- (a) Generally.

118. Indemnity selections. Instructions of July 23, 1885. 4-79

119. Circular of July 29, 1887, cited in full with approval. 6-702

120. Instructions of December 19, 1893, relative to selections in lieu of swamp lands and lands within forest reservations. 17-576

121. Regulations of March 11, 1899, with respect to indemnity selections for lands in forest reservations. 28-195

122. Regulations of March 11, 1899, modified, February 21, 1901. 30-491

123. Paragraph 2 of circular of February 21, 1901, relative to indemnity for surveyed sections in forest reserves, amended. 32-423

124. Circular of March 6, 1903, relative to mineral or nonmineral character of lands. 32-39

125. The nonmineral affidavit required by the regulations of April 25, 1907, in connection with State selections, must be based upon examinations made within three months from date of selection. 37-458

126. The requirement in rule 2 of the instructions of March 6, 1903, that with each list of indemnity school selections "a certificate of the proper authorities that the base lands have not been sold, encumbered, or otherwise disposed of," shall be furnished by the State, adhered to. 34-245

127. Compliance with paragraph 2 of the instructions of February 21, 1901, and March 6, 1903, that with each list of indemnity selections the State shall furnish a certificate of the proper authorities that the base lands have not been sold, encumbered, or otherwise disposed of, will not be insisted upon as to selections made prior to the promulgation of the instructions of February 21, 1901, where there is on file in the General Land office a certificate of nonencumbrance covering the en-

fire section in which a particular tract assigned as base is located, provided reference be made by the State to the particular list by State and register-and-receiver number, in connection with which the certificate of nonencumbrance was furnished, and a like reference to all pending lists to which said certificate is desired to be applied. 35-467

128. Regulations of January 10, 1906, relative to school indemnity selections. 34-365

129. The provisions of section 2276, R. S., restricting indemnity selections to the land district in which losses occur are repealed by the act of February 28, 1891. 13-708; 24-423

130. The right to select lieu lands vests immediately upon the legal ascertainment that a school section is reserved for public use. 3-327

131. The sale by a State of lands in fact excepted from its grant of, does not defeat its right to subsequently select indemnity therefor. 22-666

132. The act of February 28, 1891, provides that the State may waive its claim to, and take indemnity instead. 15-154

133. The State may not at will waive its right to land in place and take lieu lands of equal acreage. 17-266

134. The State acquires no right to land as school indemnity prior to the selection thereof. 9-139

135. The State will in all cases be required to file a certificate of nonsale and nonencumbrance of land designated as base for school indemnity selections, regardless of whether the land has or has not been surveyed. 39-174

136. In making selections under the grant of school lands the State may forward a list through the mails, and where a list is so forwarded and reaches the local office before the time of opening, it should be considered as proffered after the claims of all those present at the time of opening have been received; and a list so accepted as to tracts free from conflict should not be canceled because prematurely filed. 32-648

137. The essential thing was the selection of the lieu land for a portion of section 16 (Missouri) disposed of, and the

selection and entry vested title in the State. 2-496

138. Certification, when made, relates back and takes effect as of the date of survey. 9-413

139. Selection, certification, and approval pass the title to school land as fully as though transferred by patent, and the department is without authority to set aside said certification and cancel the selection. 9-106, 636

140. By the certification of a school indemnity selection title passes to the State, and an order thereafter made, by the General Land Office, canceling such certification, is without authority and void. 29-127

141. By the approval and certification of a selection, invalid because of insufficient base, legal title passes to the State, beyond the jurisdiction or power of the Land Department to divest it by an order of cancellation, and the only remedy for recovery of title to the United States is by suit for cancellation of the certified list. Such suit can not prevail against a *bona fide* purchaser for value. 32-379

142. A selection of land subject thereto, approved and certified, precludes the allowance of another selection in lieu thereof until such certification shall be set aside by proper authority. 7-91; 14-317

143. Informal notation on the records of the words "set aside" does not constitute a rejection of the selection. 5-352

144. Where a selection of land not subject thereto has been approved the State is not entitled to take other land in lieu thereof until the first selection has been relinquished or vacated. 15-559

145. An individual claim embracing a portion of a school section in place should be treated as an entirety, and where the State elects to reimburse itself for land included in such claim by selecting indemnity for a portion thereof, it thereby abandons or waives claim to the entire tract included in the entry. 33-675

146. In case of a lieu selection of land not subject thereto, such land was not reserved or granted by any act of Congress, and such selection, although it may have been approved and certified by the Secretary, is still subject to his jurisdiction and control. 30-244

147. Invalid selection approved and certified can only be canceled on the judgment of a court. 9-106

148. Certification of indemnity selection of land to which a prior adverse right had attached is null and void. 1-494

149. A decision of the commissioner passing upon the validity of a selection is conclusive upon his successor in office. 15-385

150. Approved indemnity selections are as fully reserved as the sections in place. 5-216

151. No such right is acquired by an application to select indemnity, prior to approval, as will prevent other disposition of the lands by Congress. 36-371

152. No title acquired by a selection until it has been approved and certified. 15-559

153. The approval of an indemnity selection by the Secretary passes the title thereto, and, in contemplation of law, makes such selection the act of the Secretary, and it is thereafter not material to inquire how such selection was made in the first instance. 24-106

154. The approval of a list of selections by the Secretary is an adjudication that there was no vital irregularity in the making of the selection. 32-573

155. The approval of a school indemnity selection, constituting a disposition of public lands, is a matter within the exclusive jurisdiction of the Land Department, and until that jurisdiction has been lost by the issue of patent or other action equivalent thereto, the courts, either State or Federal, may not interfere to control the exercise of such jurisdiction. 37-499

156. No title is acquired under or by virtue of a school indemnity selection until the same has been duly approved and certified, and prior thereto a disclosure that the land is mineral will defeat the selection. 39-491

157. The approval by the department, and certification thereunder, of a list of indemnity school selections made by a State, covering lands of the character granted for indemnity purposes and free from adverse claim or appropriation, which list is *prima facie* valid, and only defective by reason of the erroneous as-

signment of an improper basis therefor, passes the legal title of the lands selected to the State, and the department is thereafter without jurisdiction to revoke or cancel the selection so erroneously approved and certified. 30-230

158. A purchaser of the State's interest in indemnity lands prior to certification acquires no rights thereby; and if the State, in such case, waive its right under its selections the purchaser has no standing to be heard before the department. 18-245

159. The withdrawal of a list of selections terminates the interest of the State in the lands, and it thereafter has no interest therein that can be the subject of investigation, or considered on appeal in the presence of intervening adverse claims. 18-245

160. Where the fee is in the Government at survey, but the land is so encumbered that title can not fully vest in the State, an equivalent therefor may be taken by the State, or it may elect to await the union of title and possession in the Government and then take the land specifically granted. 6-412; 12-180

161. Indemnity may be allowed for section embraced within an Executive order made prior to survey withdrawing lands for an Indian reservation. 15-350

162. The grant of, to Nebraska, included lands within that part of the Sioux Reservation added to said State by the act of March 28, 1882, subject to the right of Indian occupancy; and, such right having been extinguished, the State is entitled to select indemnity within the limits of such reservation in said State for losses sustained therein. (See 28-358.) 18-124

163. Real status of indemnity selection not affected by failure of local office to properly note the same of record. 15-367

164. Selection of, excludes the land covered thereby from entry. 10-263

165. Selection of, though invalid, reserves the land from other disposition. 6-439; 7-350; 15-549

166. Pending the disposition of an indemnity selection, even though erroneously received, no other application including any portion of the land should be accepted, nor will any rights be con-

sidered as initiated by the tender of any such application. 34-12

167. A selection of indemnity under act of February 26, 1859, recorded and uncanceled, appropriates the land and reserves it from other disposal. 2-626

168. Selection of, prior to statutory authority therefor (act of February 26, 1859), does not operate to reserve the land embraced therein. 17-43

169. Indemnity selection made by the Territory of Washington under section 2275, R. S., reserves the land; and lands thus selected are not released from such reservation by the act admitting said Territory into the Union. 11-381, 382; 12-165; 13-378; 14-271; 20-35

170. Section 10, act of February 22, 1889, so far as it prescribes the manner or form of selection, refers to future selections only, and in nowise affects the legality of selections prior to its passage. 20-35

171. Territorial school indemnity selections reserve the land covered thereby. 5-216

172. Title acquired by valid selection will not be impaired in the hands of the State's grantee by a subsequent duplication of the basis. 8-480

173. A pending indemnity selection will not bar the State from the assertion of its right to the section in place. 9-553

174. The State may change the description of an indemnity school selection to include the identical land according to United States survey in case stated. 3-401

175. A selection not invalid under the circular of July 23, 1885, because slightly in excess of the basis. 6-702; 7-580

176. The validity of a selection, slightly in excess of the basis, made under regulations that allowed such excess, is not affected by subsequent regulations that do not recognize such a selection. 20-35

177. Basis of indemnity selection to be indicated. 4-79

178. Selection made upon a basis defective in part is invalid as to the entire selection. 6-699; 15-55

179. Where a State makes selection of a quarter section as a whole, upon a base of another quarter section assigned as a whole, and the base so assigned is de-

fective in part, it must be held defective *in toto*; and such defective base can not be amended to defeat an intervening claim. 37-609

180. Where a technical quarter section is assigned as a whole to support a selection by a State of another technical quarter section, the base so assigned can only be treated as an entirety, and if defective in part must be considered defective *in toto*; and it can not be assumed that the State intended to assign the several 40-acre subdivisions of the base land to support the corresponding 40-acre subdivisions of the selected land. 38-355

181. Under the provisions of the act of February 28, 1891, indemnity selections, resting on bases in part defective, may be approved, the defect being due to the failure of the Government to properly mark the boundaries of an Indian reservation. (See 22-666.) 17-296

182. Selections of indemnity in lieu of lands in sections 16 and 36, assumed to have been lost to the State on account of the Klamath Indian Reservation, will not be approved by the department where the base lands are without the existing boundaries of said reservation as established by the survey made in 1888. 32-457

183. Misdescription in basis resulting from clerical error will not invalidate selection where the rights of others were not prejudiced thereby. 6-702

184. Defect in basis for selection may be cured by amendment or relinquishment, but the right of the State takes effect only from the date when the defect was cured. 6-699; 27-644

185. Indemnity selection defective for want of proper basis can not be amended so as to defeat an intervening claimant. 15-549

186. The improper description of the basis as a portion of section 36 will not defeat a selection made in fact upon a deficiency caused by the nonexistence of sections 16 and 36. 7-580

187. Transfer of the basis to another selection will not defeat the title of one holding under a prior purchase of the land first selected. 15-367

188. A selection can not be regarded as the renewal of a previous selection where

neither the base alleged nor the land claimed are the same in the two selections. 20-490

189. A selection on a basis already used in a prior selection is invalid, but the defect may be cured in the absence of an adverse claim by cancellation or relinquishment of the first selection. 10-303

190. The State may be permitted to designate a new basis in support of an indemnity selection, where it is found that the basis originally assigned is invalid, but that the selection so made was accepted, and the land sold to an actual occupant. An intervening homestead entry is no bar to such action. 29-610

191. Where the State has sold a tract as indemnity land, and subsequently the record discloses no selection thereof, it may be permitted to select such tract, on due assignment of basis, where such action is necessary for the protection of its vendee, and is in pursuance of its original intention. 28-235

192. An application to amend a defective school indemnity selection is defeated by an intervening withdrawal of the land from agricultural entry, with a view to classification by the Geological Survey, under which the lands were subsequently classified as oil and placed in a petroleum reserve. 40-301

193. Where a State makes indemnity selection in lieu of school sections returned as mineral at the time of survey, and is unable to establish the mineral character of the base lands, it should be permitted, inasmuch as the selections were *prima facie* valid when made, to assign other valid bases to support the selections, notwithstanding the selected lands may have since been included within a national forest. 30-159

194. Where the State leases a tract as indemnity land, and it is subsequently discovered that it has never made selection thereof, and a homestead entry is thereupon made therefor by one having full knowledge of the actual possession and occupancy of the State's lessee, such entry will be canceled and the State given opportunity to select the land, on a proper assignment of base therefor, where necessary for the protection of its lessee; and in the event of the failure of the State to

make such selection, the lessee, if he be qualified, will be permitted to make entry of the land. 33-339

195. Where public lands are in good faith purchased from a State in the belief that the State has acquired title thereto under its school grant, and in faith of such purchase are held and occupied for many years, entry thereof by a third party should not be allowed without affording the State an opportunity to make good the title purported to be conveyed by it, by assigning a proper and sufficient basis and making selection of the land under its school grant; and in case of failure on the part of the State to make the title good, the present claimant through purchase from the State should be afforded opportunity to protect his rights by himself making entry of the land under the public-land laws. 34-304

196. Indemnity not allowed for losses alleged in an unsurveyed township. 6-824; 24-54

197. Indemnity selection resting upon a loss alleged prior to survey of the township in which such basis is situated is not void, but voidable, and becomes valid in the absence of an intervening right from the date when the loss is definitely ascertained. 7-347

198. A selection can not be allowed on an alleged loss that is not definitely ascertained by survey. 27-644

199. A selection defective in part is invalid as a whole upon the face of the record. 4-76

200. Selection of indemnity will not be disturbed where the local office corrects a misdescription and the State ratifies such action prior to the intervention of an adverse claim. 14-24

201. Indemnity selection made on a valid basis, but covering in part lands excluded from selection, may be approved as to the tracts subject to selection. 6-680, 699; 8-72

202. The State is not authorized to select double-minimum land in lieu of lost single-minimum school sections. (See 18-343.) 4-76; 5-543; 6-696

203. The State is entitled to select indemnity of the character and class it would have received had there been no deficiency. (See 18-343.) 8-31, 32

204. An indemnity selection of double-minimum land may be confirmed in the absence of an intervening claim where such land was reduced in price prior to final action on the selection. (See 18-343.)

6-571

205. Double-minimum land may be taken in lieu of double-minimum loss, but not for single-minimum loss. (See 18-343.)

S 126

206. Double-minimum lands may be taken for double-minimum loss. (See 18-343.)

14-271

207. The State is entitled to select, for lands lost in place, other lands, acre for acre, regardless of price, whether single minimum or double minimum.

18-343

208. Indemnity selection of double-minimum land of one-half the acreage of a single-minimum loss, made under a practice of the department that permitted such selections, and that was acquiesced in by the State, is held to have exhausted the right of the State to indemnity so far as such basis is concerned. (See 32-34.)

22-428

209. Where indemnity selection was made and approved under an existing ruling of the Land Department limiting the selection to 1 acre of double minimum for each 2 acres of single-minimum land lost to the grant and designated as a base for the selection, and such ruling was thereafter vacated and selection permitted, acre for acre, whether single or double minimum land, and the grant being yet in process of adjustment, the State, even though it may have acquiesced in such prior selection, will be permitted to make rearrangement of the base specified for the selections already made and approved, making the lost and selected lands equal in area, and when thus adjusted the base lands remaining may be used in the selection of other lands.

32-34

210. Twice the amount specified in section 2276, R. S., will be allowed for deficiencies where two sections to each township were granted to the State.

6-696; 12-80; 19-206

211. The State, by accepting indemnity in lieu of a deficiency shown by the existing survey, is divested thereby of all right to the basis and can assert no claim

thereto under a later survey and after the rights of third parties have intervened.

12-390

212. Selection of indemnity is an acknowledgment on the part of the State that it has no title to the basis, and the pendency of the selection is notice to a purchaser from the State of such defective title.

16-55

213. A selection by a State or Territory operates as waiver of all claim to the lands assigned as bases, and after the approval of such selection by the Secretary of the Interior it is not material to inquire how it was made in the first instance.

30-83

214. Indemnity will not be allowed where the offered base lands are covered by outstanding patents issued by the State, notwithstanding the lands were known to be mineral at the date of survey and therefore excepted from the grant.

36-432

215. No provision made for indemnity where school sections are crossed by railroads claiming the right of way. Recourse to the courts must be had by the State if the right of way is improperly asserted.

13-454

216. Indemnity may be allowed for the loss of section 36 in a fractional township, prior to subdivision of such township, if the exterior lines thereof are established, and the loss thus made certain.

10-498

217. Selections on behalf of different fractional townships should be so apportioned that each township will receive credit for the amount to which it is entitled.

10-498

218. For lands not in place the basis of selection indicated by description of fractional township.

4-79

219. Indemnity for losses occasioned by fractional sections taken under the act of February 26, 1859.

5-216

220. In determining the amount of school indemnity land to which a State is entitled on account of a fractional township, the entire quantity of land in said township is the basis of adjustment, irrespective of the fact that a part of said township may be embraced within an Indian reservation.

28-396

221. In determining the amount of indemnity school land granted the several

States on account of losses occurring in fractional townships, under the adjustment provided for in section 2276, R. S., the acreage of land returned by the Government survey will be taken as the basis for the calculation. 32-183

222. Where at the time of survey of a township a portion thereof was returned as a "salt lake now dry," and no further survey of the township has since been made, the State, after a lapse of more than 40 years, is justified in accepting such survey as a final and complete survey of the township and in proceeding with the adjustment of its school-land grant upon the theory that the township is fractional. 34-716

223. Where a township is rendered fractional by reason of a permanent body of water, and what would otherwise be the school sections therein can not for that reason be surveyed, the area of land within the township susceptible of survey determines the quantity of indemnity school land to which the State is entitled under sections 2275 and 2276, R. S. 37-430

223½. Where what if susceptible of survey would be an entire township is covered by a permanent body of water, the State is not entitled to indemnity for the school sections thereby lost to its grant. 37-430

224. The fact that sections 16 and 36 are left unsurveyed on account of their mountainous character does not render such sections fractional or wanting from a natural cause, so as to warrant the selection of indemnity therefor. 16-437

225. A school section made fractional by the exclusion of "mud flats" from the public survey, as shown by the returns of the surveyor general, constitutes a proper basis for indemnity in the absence of any proof of fraud or mistake in the survey. 26-510

226. The act of February 26, 1859, is a general provision applicable alike to all States and Territories and authorized the Territory of Washington to select indemnity to cover losses caused by the reserved sections being covered in part by permanent bodies of water. 13-378

227. The swamp-land grant of September 28, 1850, did not supersede the school-land grant made to the State of Florida

by the act of March 3, 1845, and the State is not entitled to indemnity for school sections within the Everglades, on the ground that they were lost to the school grant by reason of the swamp grant, such sections passing to the State under the school grant. 38-350

228. The State is entitled to indemnity in lieu of land covered by settlement claims at date of survey. 5-218, 543; 7-270

229. The act of February 22, 1889, so far as in conflict with sections 2275 and 2276, R. S., as amended by the act of February 28, 1891, is superseded by said amended sections, and the grant of 1889 should be adjusted under the later legislation. 12-400; 24-12, 106

230. Lands to which the State does not have full legal title at the date of selections based thereon do not constitute a valid base to support indemnity selections authorized by the act of February 28, 1891. 37-610

231. Under the grant of sections 16 and 36 made to the State of South Dakota for school purposes by the act of February 22, 1889, the State takes no vested interest or title to any particular land until it is identified by survey, and prior to such identification the grant, as to any particular tract, may be wholly defeated by settlement, the State's only remedy in such case being under the indemnity provisions of said act and of the act of February 28, 1891, amending sections 2275 and 2276. 34-657

232. The act of February 28, 1891, amending sections 2275 and 2276, R. S., supersedes section 24, act of March 2, 1889, so far as the same is in conflict with prior statutory provisions protecting settlement rights on school lands, acquired prior to survey, and leaves the rights of the State and settlers, in such cases, to be adjusted under the general provisions of the law. 21-220

233. The act of February 28, 1891, amending section 2275, R. S., protects all rights acquired by settlements made prior to survey in the field upon sections 16 or 36, reserved for school purposes, but where a township is ordered surveyed on application in behalf of the State, under the act of August 18, 1894, and the lands

are withdrawn for the purposes specified therein, such settlements only as were made prior to the withdrawal are protected as against the State. 34-434

234. The act of February 28, 1891, amending sections 2275 and 2276, R. S., is applicable to all the public-land States, and operates as a repeal of all special laws theretofore enacted, so far as in conflict therewith. 23-423

235. The act of February 28, 1891, amending sections 2275 and 2276, R. S., is a general act establishing a uniform rule with respect to the adjustment of school-land grants to the several States and affording each an equal right of indemnity, and supersedes, so far as in conflict, all other laws bearing upon the same subject. 36-89

236. By virtue of the provisions of the act of February 28, 1891, the State of Washington is entitled to receive, on account of its grant in aid of common schools, the lands appropriated in accordance with the provisions of the act of February 26, 1859, in lieu of sections 16 or 36 where such sections were fractional or wanting from any natural cause whatever, and to make selection or location of the lands appropriated on account of the grant in aid of common schools from any unappropriated surveyed public lands, not mineral in character, within the limits of the State. 36-89

237. By acquiescing in departmental decision in the case of Homestead and Timber Land Claimants *v.* State of Washington, 36 L. D., 89, the adjudication therein against the claim of the State under its selection and in favor of the prior settlers became final and fixed, and the State thereafter had no right by virtue of its selection that would attach upon relinquishment of the settlement claim; but the land thereupon became subject to appropriation by the first legal applicant. 39-473

238. A homestead application tendered while the land applied for was embraced in a *prima facie* valid school indemnity selection, accompanied by a protest against the selection on the ground of insufficient base, does not present such an adverse claim as will prevent substitution by the State, in a proper case, of a good and sufficient base, where the defect charged

in the protest was shown by the records of the General Land Office and action on that ground instituted against the State's claim before any cognizance of the protest was taken by that office. 39-377

239. Where a State selection proffered during the preference-right period accorded the State within which to make selection was held for rejection as to a certain tract for conflict with a homestead entry based upon settlement prior to survey, and while the selection list embracing the tract was still pending the entryman relinquished his entry and filed application for the land under the timber and stone act, the State's selection will be held superior to the timber and stone application, where it is apparent the entryman's settlement and entry were not in good faith to acquire a home, but merely for the purpose of defeating the State's preference right of selection and then relinquishing the entry and acquiring title to the land under some other law. 39-390

240. The act of March 3, 1893, was intended to preserve the grant in aid of common schools so far as according a preferred right of selection on account thereof, and selections made on account of that grant in furtherance of the provision of the act of February 28, 1891, are within the contemplation of the act of 1893, without regard to whether the act of 1891 be held to supplement the school grant, as defined in the act of 1889, provide for an exchange of lands, or merely enlarge the limits within which selections may be made in satisfaction thereof. 36-89

241. Where a settlement claim antedating a selection by the State of Washington under the act of March 3, 1893, and held in departmental decision of September 20, 1907 (36 L. D., 89), to be superior to the claim of the State, was subsequently relinquished while the State's claim under its selection was still subsisting and pending before the Land Department, the right of the State under its selection immediately attached. (See 38-518.) 38-165

242. The purpose of the proviso to the act of 1893 was to protect *bona fide* settlers, and it was not intended to provide a means whereby a settlement claim might

be presented merely to defeat the right of the State to select and afterwards relinquish an entry for the same land made under the timber and stone law. (See 38-518.) 38-165

243. The State by failing to file motion for review within the time allowed therefor having acquiesced in the action of the department rejecting its proffered school indemnity selection for conflict with a homestead entry allowed upon settlement prior to survey, and the preference-right period accorded by the act of March 3, 1893, within which to make such selections having expired, it has thereafter no such claim or right by reason of its attempted selection as will prevent other appropriation of the land upon relinquishment of the conflicting homestead entry. 38-518

244. Where a State within the preference-right period accorded by the act of March 3, 1893, proffers a selection, which is rejected because the land is embraced within a homestead entry allowed upon a settlement prior to survey, and the State, within the time allowed for appeal but after the expiration of the preference-right period, takes an appeal from the rejection of its application and files an affidavit attacking the validity of the settlement claim, the right of the State to proceed under its contest is superior to the right of an individual under a contest initiated against the entry within the preference-right period and prior to the filing of the selection by the State. 38-295

245. The act of February 28, 1891, amending section 2275, R. S., repeated so much of the proviso to section 2, act of July 10, 1890, as declares that the State of Wyoming shall not be entitled to select school indemnity in lieu of sections 16 and 36 in the Yellowstone National Park; and under said section 2275, R. S., as thus amended, the State is entitled to such indemnity, in so far as said park lies within its boundaries. 27-35

246. By the act of June 21, 1898, a grant, *in præsentia*, is made to the Territory of New Mexico; and under the provisions of section 2275, R. S., as amended by the act of February 28, 1891, said Territory may relinquish its claim to such school sections as it may be entitled, that are included

within the limits of a forest reserve, and select other lands in lieu thereof. 29-364

247. Where the title to school sections has vested in the Territory of New Mexico under the grant of June 21, 1898, and such sections are subsequently embraced within a reservation created by executive order, the Territory may, under section 2275, R. S., as amended by the act of February 28, 1891, waive its right to such sections and select other lands in lieu thereof. 29-399; 34-599

248. The mere inclusion of sections 16 and 36 within a withdrawal made for the purpose of examination of the lands with a view to their possible inclusion in a forest reserve, does not place them within a "reservation" within the meaning of that term as employed in the act of February 28, 1891, and therefore does not afford a base for the selection of indemnity. 32-346

249. While the mere inclusion of sections 16 and 36 within a withdrawal made for the purpose of investigation of the lands with a view to possible inclusion in a national forest is not such a reservation thereof as will afford a base for indemnity, yet where such withdrawal continued for a number of years, and the school sections have since been included in a permanent reservation, a selection based upon such sections, although filed during the period of temporary withdrawal, may be adjudicated in the light of the present status of the base lands. 37-500

250. An indemnity selection based upon lands lost to the school grant by reason of being within a forest reserve, made under the provisions of the act of February 28, 1891, prior to the repeal of the act of June 4, 1897, can not be carried to completion under the provisions of the latter act after the repeal thereof, where the selection as made was not in accordance with the requirements of that act. 37-610

251. Lands within a confirmed private claim in Florida have been "disposed of by the United States" within the meaning of section 2275, R. S., as amended by the act of February 28, 1891, and the State is therefore entitled to indemnity for section 16 included within such claim and thereby lost to its school grant. 30-187

252. Where a school section is embraced within the limits of an Indian reservation, the State may, under the provisions of section 2275, R. S., as amended by the act of February 28, 1891, waive its right thereto and select other land in lieu thereof, notwithstanding such section was identified by survey prior to the establishment of the reservation. 34-613

253. Under sections 2275 and 2276, R. S., as amended by the act of 1891, directing the Secretary to "ascertain and determine by protraction or otherwise," the townships for which indemnity may be selected, in cases of reservations, the protraction, by the surveyor general, of the township lines over an island, reservation from a map of the State published by the department, is a proper method of determining the amount of lands lost. 20-103

254. Lands within the Territory of Oklahoma included in a *bona fide* settlement claim, initiated before survey, must be treated as "appropriated" within the meaning of the act of February 28, 1891, and therefore not subject to lieu selection by the Territory, for school purposes, within the period of three months after the filing of the township plat accorded to the settler within which to place his settlement claim of record. 30-244

255. Lands within the Kickapoo Indian Reservation were, by virtue of the provisions of the act of March 2, 1895, subject to selection by the Territory of Oklahoma as indemnity prior to the opening of said lands to settlement. 32-573

256. Sections 16 and 36 of lands in the Territory of Oklahoma which have been sold by the Government, furnish a sufficient basis for indemnity, without regard to whether or not the Government owned them at the date of the granting act. 32-573

257. Settlement on, prior to and existing at survey excepts the land from the grant and entitles the State to select indemnity so long as the claim of the settler exists. 8-495

258. Indemnity selection for land covered by settlement at survey releases the basis from reservation. 6-71

259. When selection has been made, title to the land selected passes to the State,

which at the same time is divested of all right to thereafter claim the tract used as the basis, whether the settlement claim therefor is made good or not. 7-270

260. If the State makes a selection in lieu of land covered by settlement at survey, the reservation is transferred from the basis to the indemnity, and by the same act the claim to the basis is relinquished and the land opened to entry. 8-394

261. The selection and approval of indemnity divests the State of all title to the alleged basis, which is thereafter open to settlement and entry. 17-287

262. Land within a school section assigned by the State as base for indemnity selection is not subject to entry, selection, or other appropriation under the public land laws until the selection is approved and title to the base land reverts in the United States. 40-444, 554

263. The Territory is not bound to select indemnity for land covered by settlement at survey, but may await the action of the settler. 6-71

264. In case of a preemption settlement on, prior to survey the State may either select indemnity therefor or await the action of the settler and, if his claim is abandoned, assert its right to the land in place. 14-394

265. The selection of indemnity is a waiver of all claim to the land in place, and to protect a settlement claim on such land the State may take indemnity therefor if it so elects. 14-232

266. If one who has settled prior to survey subsequently thereto abandons the land, the title of the State attaches to the school section as of the date of survey and the right of the State to select indemnity ceases. 8-495

267. Settlement prior to survey extends only to those tracts on which improvements are placed, and the indemnity therefor is measured by the extent of the settler's appropriation. 10-348

268. The exclusion of a tract included within a preemption filing for an excessive acreage, based on settlement before survey, relieves the tract excluded from the settler's claim and leaves it subject to the school grant; and relinquishment of the

tract by the State affords no basis for indemnity. 13-456

269. The act of August 9, 1888, does not authorize the Secretary of the Interior to recognize settlement rights acquired after survey and require the Territory (Wyoming) to select indemnity therefor. 8-495

270. Authority of county commissioners to make indemnity selections under the act of 1853. 5-216

271. The county commissioners are not authorized to select lands in lieu of sections 16 and 36 unless actual settlers occupied them prior to survey; after survey said sections were not subject to preemption entry. 2-626

272. The authority to make indemnity selections rests with the county commissioners, who derive their authority from the act of March 2, 1853 (Washington). 11-382

273. The authority to locate indemnity selections conferred upon county commissioners may be exercised through an authorized agent (Washington). 13-378

274. The departmental regulations issued under the act of February 26, 1859, authorized the local officers to make indemnity selections where the county commissioners after due notice fail to make such selection either in person or through an agent. 20-35

275. Selections of indemnity in Oklahoma may be made from any unappropriated surveyed nonmineral public lands within said Territory for losses by Indian allotment, settlements prior to survey, fractional surveys, or from any natural cause. 14-226

276. A selection improperly allowed because of a prior pending claim may be allowed to stand on the removal of such claim from the record. 6-680; 8-72

277. The act of May 20, 1826, construed by subsequent legislation. 5-546

278. Under the act of 1826 the State (Louisiana) is not entitled to indemnity for sections in place but covered by private grants. (See 9-157.) 8-126

279. The act of May 20, 1826, authorizes selections on account of sections in place but lost to the State (Louisiana) by reason of being included within confirmed private claims. 9-157

280. The act of 1826 includes selections for "radiating" and other irregular surveys (Louisiana). 8-126

281. The selections authorized by the act of May 20, 1826, are not "lieu" selections. 8-563

282. Lands embraced within an Executive order of withdrawal are not subject to selection as indemnity. 21-134

283. A certification under the act of August 3, 1854, of lands on account of a railroad grant that were, at the date of the grant, embraced within a pending *prima facie* valid school indemnity selection, is no bar to the subsequent approval of such selection. 24-364

284. A selection should not be allowed to embrace a tract appropriated by a prior uncanceled homestead entry. 20-74

285. An intervening indemnity selection does not defeat the right of a homesteader who settles prior to survey but fails to make entry within the statutory period. 14-417

286. The right to select school indemnity extends only to "unappropriated" lands, and hence can not be recognized where at the date of selection the land applied for is embraced within a *bona fide* settlement claim of a qualified homesteader who has improved the land and is residing thereon. 26-669

287. Lands in the Great Sioux Reservation, restored to the public domain by the act of March 2, 1889, are subject to disposition only under the homestead law for the benefit of the Indians, and can not be taken as school indemnity; the certification, therefore, of said lands under indemnity selections is wholly inoperative and conveys no title to the State. 26-247; 28-358

288. Circular of May 24, 1904, under act of March 30, 1904, authorizing State of South Dakota to select school and indemnity lands in ceded portion of Great Sioux Reservation. 32-656

289. The acts of May 20, 1826, and February 26, 1859, determine what lands are subject to indemnity selections. 5-545

290. School indemnity selections for lands covered by private claims prior to the survey of such claims are invalid. 3-89

291. The return of sections 16 and 36 by the surveyor general as mineral, is sufficient evidence of mineral character to entitle the State to indemnity therefor in all cases where said return is not overcome by competent evidence to the contrary. 23-423

292. The title to school lands returned as nonmineral at the time of survey, and for which no claim was asserted under the mining or other public land laws at the date when, if at all, the right of the State would attach, presumptively passed to the State, and the State will not be permitted to make indemnity selection in lieu of such lands, on the ground that they are mineral in character, except upon a clear and satisfactory showing that the base land was known to be chiefly valuable for mineral at the date when the State's right thereto would have attached, if at all. 32-105

293. The State, by a school indemnity selection in lieu of land alleged to be mineral in character, waives its claim to the basis, which may be thereupon disposed of as part of the public domain. 24-14

294. Where school lands in lieu of which indemnity is claimed on the ground of their saline character are not shown to have been lost to the State by reason of their known mineral or saline character at the time of survey, a hearing should be had to determine their known character at such time. 31-34

295. Where school lands in place have been sold by the State, it should not be heard, in the absence of a *bona fide* claim asserted thereto under the mining laws, to question its own title and that of its vendees, on the ground that the lands are mineral in character, for the purpose of affording it a base for the selection of indemnity elsewhere. 32-412

296. A discovery of mineral on each 20 acres of a placer location serves to except the whole location from school indemnity selection. 24-507

297. An indemnity selection in lieu of land patented as mineral, of record at the passage of the act of February 22, 1889, authorizing such selections, operates to re-

serve the land as against a subsequent homestead application (Washington). 14-282

298. Indemnity selections of land returned as mineral will not be allowed without due compliance with the regulations requiring notice of the application and affirmative proof as to the character of the land. 22-294, 402

299. If at any time prior to the approval of an indemnity selection a mining location, claim, or entry, be made within the township in which the lands sought to be selected are located, publication of notice of such selection will be required, although at the time when the selection was proffered there was no mining location or claim in such township. 32-479

300. The "affirmative proof" required on selection of lands returned as mineral may consist of the affidavit of the applicant, supported by the affidavits of two or more persons whose acquaintance with the character of the land is derived from a careful personal examination of each 10-acre tract thereof. 22-402

301. Where an application to select indemnity is rejected on account of an adverse claim, and the State elects to stand on a protest against said claim and not appeal from the rejection, it will be bound by the result of the action on the protest. 15-316

302. Land claimed as indemnity should not be leased until the validity of the selection has been determined (Oklahoma). 15-370

303. Lands lying within the limits of a railroad grant forfeited by the act of September 29, 1890, are subject to selection as indemnity for lands lost in place. 23-423

304. Lands in lieu of which indemnity is claimed should be described according to legal subdivisions. 31-34

305. All applications for indemnity lands in lieu of school sections embraced, after survey, within a forest reservation, "must designate by specified legal subdivisions the lands in lieu of which indemnity is desired," and applications which do not conform to this requirement can not be accepted. 30-608

306. A selection authorized by the State of lands in lieu of sections 16 and 36 in a

forest reservation, where the right of the State to said sections has attached under its school grant prior to the establishment of the reservation, is such a waiver of its right to said sections as to obviate the necessity for the formal relinquishment thereof to the United States, as required by circular instructions of March 11, 1899. 30-438

307. The preference right of selection granted to certain States, including Washington, by act of March 3, 1893, includes the right to select indemnity for losses occurring to the grant made to said State in support of common schools. 31-386

308. The assignment by a State, as a base for the selection of land as indemnity under its school grant, of a portion only of a smallest legal subdivision, where the whole of that legal subdivision has been lost to the State, will not be accepted by the department. 31-438

309. The State is required, in making application to select land in lieu of sections 16 and 36 in a forest reservation, where the title of the State to such sections has vested prior to the establishment of the reservation, to designate by specified subdivisions the lands in lieu of which indemnity is desired, and to show, by certificate of the proper officer having charge of its records of disposal of its school lands, that it has made no sale or other disposal of the lands assigned as a basis for its proposed lieu selection, and also, by certificate of the officer having charge of the record of titles to lands in the county where the lands lie which are assigned as a basis for the selection, that no conveyance of title, lease, or other transfer of such lands, or of any interest therein, appears of record in his office. 30-484

310. The grant of sections 16 and 36 made to the State of Montana by the act of February 22, 1889, for school purposes, is a grant *in presenti*, but the right of the State thereunder does not attach to any particular tract of land until identified by survey; and where prior to such identification any section 16 or 36 is embraced in a national forest the right of the State to that specific tract does not attach so long as the reservation con-

tinues, but the State is entitled to select indemnity therefor. 38-247

(b) Alabama.

311. By the enabling act and act of admission the State of Alabama was invested with the legal title to every sixteenth section, according to the surveys, irrespective of the character of the lands upon which they were located, and in case of previous disposal thereof the right to indemnity existed in the same character of land. 6-493

312. The legislation subsequent to the enabling act, while resulting in a particular method for the disposition of mineral land, did not repeal that act or abridge the right of the State to the sixteenth section or to select indemnity therefor. 6-493

313. The act of March 3, 1883, did not operate to reserve lands reported as containing coal and iron from selection until after public offering. 6-493

(c) California.

314. Circular of July 23, 1885, as to selections of indemnity in California, modified. 25-383

315. In the adjustment of the grant the surveyor general of the State may appoint an attorney to represent the State, or revoke such an appointment when made if the power conferred thereunder is not coupled with an interest. 6-403

316. Counsel for the State have no authority to designate bases to support indemnity selections, such power resting solely in the officer of the State authorized to make selections in its behalf. 38-355

317. The rejection of an application to purchase under the act of March 1, 1877, will not bar a second application by the same party based on a different claim. 8-326

318. The act of March 1, 1877, confirmed to the State all invalid selections made prior thereto except (1) for lands occupied by *bona fide* settlers prior to certification, (2) those mentioned in the first proviso to the second section, and (3) selections in lieu of sections which had been surveyed in place and the title to which

had vested in the State at the date of said selections. (See 15-477.) 6-302, 552

319. Selections made for losses alleged through conflicting Mexican grant and approved before the act of 1877 were confirmed by the second section of said act though on final survey of the said grant or survey of the public lands it transpires that the school lands were not lost, as alleged, and as the result of such confirmation the United States resumed ownership of the basis. (See 15-477.) 6-302, 552

320. A selection of indemnity made and approved before the final survey of a private claim excluding the basis therefrom is confirmed by section 2, act of March 1, 1877, and the basis therefor is subject to disposal as other public lands. 14-252

321. A purchase from the Government of an indemnity selection confirmed by the act of 1877 does not strengthen the title or cause the title to the basis to revert to the State. 15-519

322. A selection made prior to the act of March 1, 1877, in lieu of lands included at date of selection in the surveyed limits of a Mexican claim and subsequently excluded therefrom is confirmed by section 2 of said act, and title to the basis reinvested in the United States. 15-519

323. A selection approved prior to the act of March 1, 1877, erroneously based on a tract that had been identified as school land and never included in a Mexican claim by an authorized survey, is confirmed by section 2 of said act, and title to the basis reinvested in the Government. 15-477

324. If full compensation has been received on account of a fractional township, further selections will not be allowed on the ground that the basis in the original selection was improperly described as a part of sections 16 and 36; and this rule applies whether such selections were made before or after the act of March 1, 1877. 8-307

325. A selection resting upon a basis already exhausted by a prior approved selection is not confirmed by section 2, act of March 1, 1877. 9-106

326. In the adjustment of school-land grants it is within the power, and is the duty, of the Land Department to see that

sufficient losses, or quantities of land to which the State might have been entitled under its grant had they been in place and not otherwise disposed of, equal in amount to previous certifications on account of the grant, approximately, are furnished as a base for such previous approvals or certifications, before other approvals and certifications are made on account of the grant. 31-270

327. There is nothing in the act of March 1, 1877, relating to indemnity school-land selections in California, in conflict with this requirement. 34-270

328. If by public survey approved after the passage of the act of March 1, 1877, a school section is found in place and not within a Mexican grant, a selection made in lieu thereof is confirmed by said act, although the final survey of the grant which excluded the school section was made prior to the passage of said act and date of selection. 6-552

329. Indemnity selection is not confirmed by the act of 1877 if the basis therefor was found in place and subject to the grant. 1-403

330. A selection, made and approved prior to the act of March 1, 1877, in lieu of lands within an Indian reservation, but which in fact at date of selection and approval had been restored to the public domain, and were afterwards by the public survey shown in place, is within the confirmatory provisions of section 2 of said act. 19-432

331. A certified selection which fails by reason of the basis being excluded from the final survey of a Mexican grant is confirmed by section 2 of act of March 1, 1877, though the final survey of the grant was prior to the passage of the act. 9-208

332. An indemnity selection approved prior to the act of March 1, 1877, in lieu of lands supposed to be lost to the State by reason of being included in a Mexican grant, but subsequently upon final survey found not to be within the grant, was confirmed by section 2 of said act, and the base land thereupon became subject to disposal as other public lands; but where the base land is in possession of one claiming under a patent from the State, such

possession, although conferring no right as against the United States, should, if *bona fide* and notorious, be recognized as reasonable ground for according the claimant priority of right to secure title under the public-land laws, if qualified, or for affording the State an opportunity to make good the title purported to have been conveyed by it, by assigning a proper and sufficient basis and making selection of the land under its school grant. 36-22

333. Where an illegal indemnity selection was made by the State, and neither the State nor the United States has consented to a ratification thereof under the act of March 1, 1877, a third party, not claiming any right or title growing out of such illegal selection, will not be heard to question the right of the United States and the State to adjust the grant between themselves as to the land involved. 37-343

334. An applicant for the right of purchase under the act of March 1, 1877, is "an innocent purchaser" if his vendor held without notice of defect in the State's title. 8-326

335. Indemnity selections certified prior to the act of March 1, 1877, for losses alleged in townships made fractional by the segregation of swamp lands will not be disturbed. 8-4, 24

336. Right of purchase under the act of March 1, 1877, not defeated by the erroneous cancellation of a selection. 8-326

337. Irregular selections of lands sold to innocent purchasers prior to the act of July 23, 1866, confirmed by section 1 of said act. 8-480

338. Invalid indemnity school selections upon unsurveyed land disposed of prior to July 23, 1866, confirmed on the State's indicating an equivalent acreage for the invalid basis. 3-401

339. The segregation of swamp lands does not render a township fractional and thereby furnish a basis for indemnity. 15-10

340. The phrase "reserved for public uses" in section 6, act of July 23, 1866, does not authorize the allowance of indemnity for lands that passed to the State under the swamp grant. (See 31-335.) 15-10

341. Section 2275, R. S., as amended by the act of February 28, 1891, does not authorize the allowance of indemnity for California swamp lands. (See 23-423.) 15-10

342. Swampy character of a school section affords no basis for indemnity. (See 31-335.) 17-576; 19-359

343. The State is entitled to indemnity for lands in sections 16 and 36 which have passed to the State under the swamp-land grant. 32-648

344. Under the provisions of section 2275, R. S., as amended, the State is entitled to indemnity for school sections lost to the State by reason of their mineral character. 23-423

345. Under the act of February 28, 1891, amending section 2275, R. S., the State may, if it so elects, waive its right to portions of sections 16 and 36 in place, and select other lands in lieu thereof, upon proof showing the present character of the lands to be mineral, without regard to their known mineral character at the date of survey. 33-356

346. Section 2275, R. S., is not applicable to the State of California as said State derives the right to indemnity through special provisions made by the act of July 23, 1866. 15-10

347. The permanent reservation, for lighthouse purposes, of an island lying off the coast of California entitles the State to select indemnity lands lost to the State by reason of said reservation. 20-103

348. Instructions of December 19, 1893, relative to amendatory selections and selections in lieu of land within forest reservations. 17-576

349. Indemnity selections may be properly allowed in lieu of unsurveyed sections in place that fall within a forest reservation. 19-244; 20-327

350. Sections 2275 and 2276, R. S., as amended by the act of February 28, 1891, do not authorize school indemnity selections in lieu of surveyed school sections that are subsequently included within the boundaries of a forest reservation. (See 28-57.) 19-585

351. Where a forest reservation includes within its limits a school section, surveyed prior to the establishment of the reservation, the State under the authority of the

first proviso to section 2275, R. S., as amended by the act of February 28, 1891, may be allowed to waive its right to such action and select other land in lieu thereof. 28-57

352. Title does not vest in the State until the granted sections have been surveyed, and where subsequent to survey of a township in the field, but prior to approval of the survey, the township is withdrawn for forestry purposes, no rights to the school sections therein accrue to the State, and such sections do not constitute a valid base for the selection of lieu lands under the act of June 4, 1897. 37-164

353. The act of March 3, 1853, granting sections 16 and 36 in each township to the State, for school purposes, and the act of February 28, 1891, granting indemnity for such sections where they are "mineral land, or are within any Indian, military, or other reservation, or are otherwise disposed of by the United States," are *in pari materia*, and should be construed as one act. 31-335

354. Where any sections 16 or 36 were swamp and overflowed and passed to the State under the grant made by the act of September 28, 1850, they are "disposed of by the United States" within the meaning of the act of February 28, 1891, and the State is entitled to indemnity therefor. 31-335

355. A withdrawal of public lands for the purpose of creating a forest reserve precludes the subsequent selection of such lands as indemnity. 20-103

356. An application to select indemnity, on a basis of an alleged loss of unsurveyed lands within a timber reservation, prior to an official determination of the number of townships included in said reservation, may be accepted and treated as valid, not in recognition of any such right on the part of the State, but as a matter within departmental discretion. 25-40

357. By the action of the department in its decision of February 13, 1904, permitting certain indemnity school-land selections filed by the State previously accepted and placed on record, and based upon lands alleged to be lost to the State because included within a temporary withdrawal with a view to their examination

preliminary to the creation of a forest reserve, to stand, pending final determination of the boundaries of the proposed reserve, which would fix the status and determine the question of availability of the base lands, it was not the intention to include mere applications previously presented by the State, but which had not been formally accepted. 33-483

(d) Colorado.

358. The grant to Colorado was of the sixteenth and thirty-sixth sections where such sections at the date of survey had not been sold or otherwise disposed of, with the right to indemnity if such sections at the time of survey were not subject to the grant. 6-412

359. Sections appearing as mineral at date of survey do not pass under the grant, but the State (Colorado) is entitled to indemnity therefor. 6-412

360. Selections in Colorado in lieu of mineral lands in sections 16 and 36. Circular provisions of March 23, 1887. 5-696

361. The State (Colorado) entitled to indemnity for, within the Ute Reservation. 6-412

362. If the State takes indemnity for land returned as mineral, it is estopped from asserting a further claim to the basis even though it is in fact agricultural land. 11-504

363. In adjusting the grant to the State of Colorado indemnity may be allowed for lands lost by settlement and entry, and also where the bases are covered by military reservations or patented private claims. 12-70

364. Indemnity selections may be made from lands that are reasonably contiguous to the bases (Colorado). 12-70

365. The State of Colorado is entitled to indemnity for sections 16 and 36 in Fort Reynolds Military Reservation, as said reservation was created prior to survey and the statute directing disposition of the land makes no exception of said sections. 15-151

366. A fee of \$1 each to the register and receiver is chargeable to the State (Colorado) for each indemnity selection of 160 acres. 13-728

SCRIP.

See PRIVATE CLAIM, XII; STATES AND TERRITORIES, 39, 109; WARRANT.

1. Returns from local office on location. Circular of December 4, 1889. 9-657

2. Circular of February 2, 1895, under act of December 13, 1894, providing for the satisfaction of certificates of location issued under section 3, act of June 2, 1858. 20-95

3. Circular of May 31, 1898, respecting location and assignment of. 27-167

4. Circulars of February 21 and March 26, 1908, governing location of scrip, etc. 36-278, 346

5. Circular of February 21, 1908, requiring publication and posting of notice of applications to make location of scrip, warrants, certificates, soldiers' additional rights, and lieu selections discussed, particularly with respect to the provisions thereof relating to soldiers' additional rights, and adhered to. 36-522

6. The circular of February 21, 1908, requiring publication of notice of all applications to locate scrip, warrants, certificates, soldiers' additional rights, or to make lieu-land selections, filed on or after April 1, 1908, merely makes mandatory after that date what theretofore was within the discretionary power of the Land Department to require, and in nowise affects its authority to require, notice of applications filed prior to that time. 37-342

7. Instructions of December 22, 1908, relative to applications to locate on unsurveyed land. 37-351

8. Identity of assignee must appear. 1-300

9. Erasures in assignment of, must be accounted for. 1-301

10. Assignment of, in blank not accepted. 1-301; 2-430

11. Assignment of, required from the legal representative of the party to whom it was issued. 1-302

12. A location is not invalid because the name of the assignee is inadvertently omitted from the written assignment where it is apparent that the locator is in fact the lawful possessor with authority to locate in his own name. 19-547

13. Attorney in fact must show authority for assignment of. 1-302

14. Where the scrip was assigned to a person unknown, the name of the assignee erased, and the claimant's inserted, the latter is required to show title and account for the erasure. 3-142

15. When there is a discrepancy in the spelling of names, affidavit as to the true orthography and identity of persons is required. 2-430, 431

16. An application to locate is not complete unless the, on which it is based accompanies the application. 21-71

17. Return of, on reconveyance of title not justified in the absence of showing that the value of the land has not been diminished by the patentee. 13-550

18. Returned if the entry made by specific location fails. 1-533

19. The granting of applications for the return of scrip rests in the sound discretion of the head of the Land Department, and is controlled substantially by the same principle that governs in applications for the return of purchase money covered into the Treasury. 33-315

20. An entryman will not be permitted to relinquish his entry or to allow it to be canceled and withdraw his scrip where the entry can be confirmed and where the only obstacle to confirmation is the arbitrary refusal of the entryman to supply the necessary proof. 33-315

21. By the cancellation of an entry located with agricultural college scrip the scrip is released and becomes the personal property of the owner of the entry at that time, locatable upon other lands either by the owner or his assignee; and a quit-claim deed executed by such owner subsequent to the cancellation of the entry, purporting to convey all right, title, and interest in the land formerly located, is without effect to pass any right or title to the scrip. 37-207

22. An application for permission to surrender a patent issued on a location of, and for the return of the scrip with the right to pay cash for the land, on the ground that the acreage called for by the scrip and shown by the public survey is not found in place, must be denied, as the land is not now and was never subject to private entry. 13-550

23. Where an application to locate covers noncontiguous tracts and is allowed for one and rejected as to the other on account of noncontiguity, the entry allowed may be canceled on request and the scrip returned if the Government by such action sustains no loss. 11-328

24. A locator of, can not compel the cancellation of a location by failure to furnish the requisite nonmineral proof, as the Government may determine the character of the land without the aid of the locator. 15-255

25. Where title has been acquired through location of duplicate the beneficiary can not locate the original on another tract while patent to the former is outstanding. 12-106

26. Location of, properly subject to contest. 14-576

27. Commissioner may order a hearing to determine the validity of a location. 8-207

28. Location confers no vested right that precludes inquiry on behalf of the department as to the status of the land, or as to any question affecting the validity of such location. 26-453

29. A location made in accordance with the law passes title out of the United States. 8-207

30. Location by one holding scrip in violation of law confers no title. 8-207

31. Validity of claims may be passed upon where adverse claimants voluntarily appear at a hearing. 8-207

32. Is money within the meaning of section 2262, R. S., if used in payment for the land. 2-599

33. Failure to show title in the claimed assignee of indemnity scrip renders it unavailable in his name. 3-41

34. Location of, upon unsurveyed lands (tide lands) confers only a preference right to perfect the location after survey as against every one except the United States; but until after the location is adjusted the Government has full power to dispose of the land covered thereby. 10-365

35. Pending unadjusted locations on tide lands confer no rights as against the title of the State on its admission into the Union. 12-299

36. Location of, prior to survey may not be enlarged to the detriment of subsequent claims. 1-431

37. Adjustment of a location to the lines of the public survey does not validate a location theretofore invalid. 8-207

38. The execution of an act authorizing the issuance of, having been suspended by joint resolution of Congress, precludes further action by the department. 6-13

39. Right of locator to act as the agent of the party to whom the scrip was originally issued not material where its possession had been awarded another. 6-101

40. Application for, if the matter is not *res judicata*, should be addressed to the Commissioner of the General Land Office or the surveyor general. 6-374

41. Issued under the act of June 2, 1858, in satisfaction of a private claim may only be located on land subject to private entry. 11-378

42. Location of a surveyor general's certificate, upon lands of the class designated in the act of June 2, 1858, for a less area than called for, does not constitute a waiver of the excess. 35-483

43. Surveyor general's scrip issued under the act of June 2, 1858, can be located only on lands subject to private entry "at a price not exceeding \$1.25 per acre." 33-625

44. The special provisions of the act of June 2, 1858, relating to the location of surveyor general's certificates of location upon lands subject to sale at private entry, are in no wise affected by the general provisions of the act of March 2, 1889, restricting the sale of public lands at private entry to the State of Missouri. (See 35-399.) 30-616

45. The right to locate surveyor general's scrip on land subject to sale at private entry at \$1.25 per acre, conferred by the special act of June 2, 1858, is in no wise affected by the general provisions of the act of March 2, 1889, or the absence of a restoration notice, where after the passage of said act the land may have been included in a homestead entry that is subsequently canceled. (See 35-399.) 31-132

46. Applicant for, under the act of 1858 must show himself to be the legal representative of the confirmee. 5-570

47. In case the Land Department is not entirely satisfied as to the legal ownership of scrip, it may require that location thereof shall be in the name of the confirmee, if living, or, if dead, in the name of his legal representatives, and patent will be issued accordingly, leaving it to the courts to determine who shall take title thereunder. 36-10

48. An entry in which the land is paid for with surveyor generals', issued under the act of June 2, 1858, may be referred to the board of equitable adjudication, where the application to locate the scrip was irregularly made for the aggregate amount, instead of separately for each piece. 20-502

49. The necessity for the sale of decedent's property, whether real or personal, in the State of Alabama, is a jurisdictional fact that must appear upon the face of the record; and an order of sale, by a probate court, founded upon an application which does not allege or show that any legal cause for the sale exists, is a nullity and affords no basis for favorable action in proceedings to secure the issuance of scrip under the act of June 2, 1858. 31-344

50. The Commissioner of the General Land Office has jurisdiction to supervise and review the action of surveyors general in awarding certificates of location under the act of June 2, 1858, and to determine, either prior or subsequent to their location, whether such certificates were properly issued. 35-123

51. It is the province of the Land Department to determine whether assignments of warrants or surveyor generals' certificates or scrip issued under the act of June 2, 1858, are sufficient, independently of the adjudication of the courts, and where the validity of warrants or certificates and the assignments thereof have been authenticated by the Commissioner of the General Land Office, in the proper exercise of his jurisdiction and authority, and have passed into the hands of innocent purchasers upon the faith of such authentication, and are held or

have been located by such purchasers, the question as to the regularity of the assignments should not be reopened. 36-11

52. An application for the issuance of, under a special act of Congress authorizing the Commissioner of the General Land Office to permit the person named therein "to enter 160 acres of public land subject to entry under the homestead law" must be denied where the act contains no provision in terms authorizing such action, and furnishes no basis for the exercise of discretionary power in that respect. 24-390

53. Lands withdrawn for railroad purposes and restored to "homestead and preemption entry only" not subject to Supreme Court location. 3-319

54. Issued under the act of June 22, 1860, locatable only on land subject to private cash entry. 10-616

55. A New Madrid location of unsurveyed land is not authorized by the act of February 17, 1815, and while the law thus remained was no bar to other disposition of the land. 14-3

56. The act of April 26, 1822, did not operate to save a location on unsurveyed land where such land had been previously sold by the Government to intervening adverse claimants. 14-3

57. Agricultural college, issued under the act of July 2, 1864, is on the basis of a single minimum grant and must be so computed in the location of double minimum land. 14-377

58. The right of purchase accorded by the act of June 8, 1872, under Chippewa half-breed locations is restricted to locations made prior to said act. 16 204; 27-482

59. The treaty of September 30, 1854, and the act of December 19, 1854, must be read together to ascertain the intention of Congress concerning lands that could be taken under Chippewa half-breed scrip, and when so construed it clearly appears that such intention was to limit said selections or locations to the ceded territory. 27-482

60. Issued to the Chippewa mixed bloods under the seventh clause of section 2, treaty of September 30, 1854, is personal and not assignable, and a valid transfer

thereof can not be effected through a double power of attorney. (See 19-64.)

14-576

61. The subsequent ratification of acts performed under double power of attorney executed to effect a transfer of Chippewa will not operate to give validity to a location and sale thereunder.

14-576

62. The right to select 80 acres of land accorded to the mixed bloods of the Chippewas of Lake Superior by the seventh clause of article 2 of the treaty of September 30, 1854, is not dependent upon actual residence, at the date of said treaty, among or contiguous to said Chippewas; nor do the provisions of said treaty prohibit the sale, prior to patent, of land located by power of attorney under such right of selection.

19-64

63. The seventh clause of article 2 of the treaty of September 30, 1854, did not authorize the issuance of, to the Chippewa half-breeds, and the location thereof on unsurveyed land would not operate to defeat a railroad grant.

18-290

64. The confirmatory act of June 8, 1872, does not ratify or confirm an unauthorized location of, as against a prior appropriation of the land under a railroad grant.

18-290

65. Chippewa half-breed, issued under the provisions of article 7 of the treaty of April 12, 1864, in the possession of a half-breed not qualified to receive the same under the terms of said treaty, confers no title upon the possessor or his transferee.

21-565

66. Authorized by article 7, treaty of April 12, 1864, was intended to take the form of property, subject to sale and transfer, and confers upon the holder thereof title and the right of location.

21-565

67. Application for the reinstatement of certain canceled Chippewa locations in the Mille Lac Reservation refused on the ground that the matter was *res judicata*.

3-196

68. Location of Gerard, limited to surveyed "public lands."

9-114; 38-485

69. Two pieces for 160 acres each may issue in lieu of one for 320 acres.

1-303

70. Sioux half-breed, may be reissued in smaller denomination at any time prior to location. (See 6-648.)

5-695

71. No authority in the department to accept the relinquishment of, issued under the act of July 17, 1854, adjudge the ownership thereof, and issue new scrip of lesser denomination in its place.

6-648

72. One of several heirs to a Sioux half-breed scrip right has no authority to locate the same without the consent and authority of the owners of the other interests.

39-538

73. Sioux half-breed, is not subject to transfer.

8-207; 29-309

74. Sioux half-breed, intended as an evidence of a personal right in the half-breed to locate and receive patent for the number of acres named therein, and can not be used to secure title to lands except for the benefit of the half-breed.

12-138

75. Sioux half-breed, issued under the act of July 17, 1854, is not transferable, and the beneficiary is estopped from denying the validity of a location made under a duplicate issue, as such location could only be made for his benefit.

12-105

76. Transfer of Sioux half-breed, effected through double powers of attorney will not be recognized.

8-207; 21-111

77. Sioux half-breed scrip is not assignable, and a power of attorney to locate the same can not be made irrevocable nor create any interest in the attorney, but is subject to revocation at any time prior to location of the scrip thereunder.

33-562

78. In view of the statutory inhibition against the transfer or conveyance of Sioux half-breed scrip, there can be no valid power to locate such scrip coupled with an interest.

39-554

79. At any time before location and sale of the land the scrip may revoke a power of attorney given by him to locate Sioux half-breed scrip, whether the attorney in fact has notice of the revocation or not; and while the Land Department may, for good and sufficient reasons, refuse to allow the scrip to change or abandon a location, the attorney in fact can not as a matter of right insist that a location made under good and sufficient powers shall be approved in opposition to the wish of the scrip, as every act of the attorney under such powers must be for the use and benefit of the scrip.

39-565

80. A location of Sioux half-breed, by one acting in his own interest and not for the half-breed is a violation of the statute under which the scrip issued. 12-138;

13-673; 21-111

81. The right to locate Sioux half-breed, on unsurveyed land can only be exercised where the half-breed has made improvements on the land, and such improvements must be for the benefit of the half-breed.

12-138; 18-368; 21-306; 29-309

82. If the location of Sioux half-breed, is illegal, a deed of ratification executed by the beneficiary will not give it validity or prevent inquiry as to whether the improvements were placed on the land for the benefit of the half-breed. 12-157

83. Issued to the Sioux half-breed requires in location on unsurveyed land a showing of improvements made for his benefit. 8-207

84. Improvements made for the benefit of one claiming the right of location under a power of attorney are not within the intent of the law. 8-207

85. Sioux half-breed, not locatable upon "occupied" land. 3-557

86. The act of July 17, 1854, authorizing the issuance of Sioux half-breed, does not require that the locations of such scrip should be made of contiguous tracts. 29-601

87. Sioux half-breed, may not be located on land withdrawn for a railroad (Northern Pacific) while an Indian reservation and afterwards released. 2-520

88. Double minimum lands are subject to location with Sioux half-breed scrip only upon payment of the difference between the single and double minimum price. 39-446

89. The location of Sioux half-breed, on unsurveyed land is permissible, but until the Government survey is filed the scrip location remains unadjusted. 20-530

90. The right acquired by the location of Sioux half-breed, on tide lands is not sufficient to defeat the title of the State, by virtue of its inherent sovereignty, on its admission to the Union, over land within its limits below ordinary high-water mark. 20-530

91. The department has authority to issue duplicate Sioux half-breed in lieu of scrip lost or destroyed. 22-40

92. The department has authority to issue duplicate Sioux half-breed scrip where the original is lost or destroyed; and upon a clear and unequivocal showing of the loss of the original and duplicate, or as to the fraudulent procurement of the duplicate, triplicate scrip may issue. 37-1

93. The act of July 17, 1854, authorized the issuance of, to the Sioux half-breeds in payment for their interest in the reservation purchased by the Government, on due relinquishment of such interest; and where it appears that such scrip was procured on a forged power of attorney and relinquishment of like character, and was afterwards located and the entry carried to patent, all without the knowledge or consent of the rightful claimant, the right of said half-breed to receive new or copy scrip should be recognized, and his relinquishment secured. 22-42

94. Gerard and McKee scrip may be located only upon surveyed public land. 9-114; 38-485

95. Land within the corporate limits of the city of Chicago is not vacant public land, and as such subject to location with McKee scrip. 12-389

96. Land lying between the meander line of a lake and the water line thereof is not public land of the United States subject to location by McKee, if at the time of such attempted location the Government has no interest in said land as riparian owner. 26-453

97. Palatka scrip may be located only upon surveyed land. 37-118

98. A special swamp indemnity certificate, issued to the State of Florida under the act of June 9, 1880 (Palatka scrip), is not locatable upon lands within the corporate limits of a city. (See 19-77.) 17-355

99. A special swamp indemnity certificate (Palatka scrip), locatable upon "vacant and unappropriated public lands," may be located upon lands of such character lying within the corporate limits of a city, if in fact such land is not claimed by said city, and can not be under the public land laws. 19-77

100. Porterfield, is locatable only upon lands that have been surveyed under authority of the Government. 23-319

101. Porterfield, may be located upon offered or unoffered land and upon land within the incorporated limits of a town. 1-497

102. Porterfield, can not be located upon land actually settled upon, used, and occupied for townsite purposes. 16-397

103. No merely *de facto* appropriation will defeat a Porterfield location. 1-497

104. Porterfield, may be located upon any surveyed land of the United States not mineral and not legally appropriated. 1-497

105. The provision in the act of April 11, 1860, that Porterfield warrants may be located only on lands "which have not been otherwise appropriated," contemplates lands *legally* appropriated; and an applicant to locate such a warrant is not required to file with his application an affidavit of nonoccupancy, it being only incumbent upon him to show, after such notice as may be required by the Land Department with a view to putting adverse claimants, if any, on notice, that there has been no prior legal appropriation of the land. 37-341

106. Temporary order of commissioner reserving land from appropriation defeats a Porterfield location. 3-217

107. Porterfield, not locatable upon land dedicated by statute to municipal uses. 10-375

108. Porterfield, is not locatable upon double minimum land. 21-331

109. Porterfield, not locatable upon abandoned military reservation. 27-82

110. Valentine, may not be located on a tract in Chicago formed by accretion after survey on the lake shore of the section. 2-338

111. Valentine, not locatable within the corporate limits of a city or townsite. 5-382

112. Land embraced within a reservation for townsite purposes is not subject to location with Valentine. 12-281

113. Right to locate Valentine scrip on lake front in Chicago *res judicata*. 5-382

114. Valentine, not locatable upon unsurveyed lands within the Territories lying below high-water mark and above low-water mark. 10-365

115. Lands occupied and within the corporate limits of a city not subject to Valentine location. 3-200

116. Lands actually occupied by another are not subject to location with Valentine scrip; and whether the occupancy is such as meets the requirements of the homestead laws, or whether the occupant is qualified to assert and maintain a claim under those laws, will not be inquired into under an application to locate the land with such scrip. 35-291

117. Valentine, may be located on lots made by union of small tracts in adjoining quarter sections. 2-460

118. Valentine, may not be located on land covered by a preemption claim. 2-594

119. Valentine, may not be located on lands valuable mainly for pine timber within the reservation in Michigan for the Ottawa and Chippewa Indians. 2-190

120. The owner of Valentine, who has located the same upon unsurveyed land may withdraw the same or change the location at any time prior to survey and before the adjustment of such location. 15-170

121. A location of Valentine, on unsurveyed land when adjusted after survey is equivalent to a purchase if the land is subject to such disposition, and the owner of the scrip can not thereafter change the location and use the scrip again. 15-255

122. In adjusting a Valentine-scrip location of unsurveyed lands to the "general system of United States land surveys," as required by the act of April 5, 1872, the location must be conformed to the actual lines of legal subdivisions as established by survey. 38-371

123. Double minimum lands are subject to location with Valentine scrip only upon payment of the difference between the single and double minimum price. 38-371

124. By the location of Valentine scrip upon a legal subdivision of the public land of less area than that called for by the scrip the locator does not waive or surrender his right to the excess or unused portion thereof. 31-259

125. Land warrants (Valentine scrip) are not commercial or negotiable paper, and the doctrine applying to innocent holders of commercial paper acquired by

fore maturity has no application thereto; and an assignee of such warrants can acquire no greater interest as against the Government than belonged to the warrantee. 35-544

126. The owner of Valentine scrip may by an assignment in blank and delivery of the scrip convey all his right, title, and interest in the same to the lawful possessor, who may thereafter insert his name in the assignment; and while the Land Department may, before approving the location of such scrip, require the locator to show that he is the true and lawful owner thereof, such requirement should not be made in advance of location. 35-429

127. The provision of the act of December 28, 1876, restricting the location of the certificate therein authorized to be issued to the legal representatives of Samuel Ware to land "subject to sale" contemplates that location thereof may be made only upon land subject to sale at private cash entry. 36-367

128. Ware scrip may be located only upon surveyed land. 39-417

129. Authority of law for the issue of Wyandotte scrip not questioned. 3-444

130. Land open to preemption and settlement subject to Wyandotte location. 3-443

131. Patents on locations of Wyandotte scrip must, under the express terms of the treaty of January 31, 1855, issue "in the names of the reservees." 37-596

132. The general provisions of the act of March 2, 1889, restricting the sale of public lands at private entry to the State of Missouri, did not contemplate the nullification of the special right conferred by the act of March 2, 1855, upon States to locate swamp indemnity certificates on lands that were at the date of said act subject to entry at \$1.25 per acre. 22-657

SECRETARY OF THE INTERIOR.

See JURISDICTION; LAND DEPARTMENT, II.

SELECTION.

See RAILROAD GRANT, VII; RESERVATION, 356-382, II, b; SCHOOL LAND, II; STATES AND TERRITORIES; SWAMP LAND, II; WORDS AND PHRASES CONSTRUED, 80-81.

SEMINOLE LANDS.

See OKLAHOMA LANDS, 26, 141.

1. Circular of April 1, 1889, directing the manner of disposition under the act of March 2, 1889. 8-336

2. Proclamation of the President opening to entry. 8-341

SETTLEMENT.

See CONTEST, 97, 566-572; CONTESTANT, 143-148; FILING; INDIAN LANDS; OKLAHOMA LANDS; RAILROAD LANDS; RESIDENCE.

I. Generally.

II. Homestead.

III. Osage Land.

IV. Preemption.

I. Generally.

1. Actual date of settlement may be shown on contest or in final proof, though it be earlier than alleged in the application. 1-444; 3-103, 380

2. Priority of, confers no right where it is not made for the purposes contemplated by law. 12-654

3. Priority of, is protected only under legal assertion of right. 4-387

4. Rights claimed under, should be asserted within the statutory period to be effective as against the intervening entry of another. 15-397;

16-266, 270; 17-345; 20-550; 21-542

5. A claimant will not be heard to assert, where by his own laches he has allowed the rights of others to intervene, and by his own acts recognized such intervening rights. 21-138

6. As between rival applicants for the same land, the prior settler must maintain his prior right by continued compliance with the law. 34-298

7. One asserting prior settlement as against an application to enter, suspended because of the closing of the local office, must, in order to maintain his alleged claim, continue residence upon the land pending determination of the question of superior right. 39-348

8. Where one claiming to be a prior settler institutes proceedings against an

entry made subsequent to his alleged settlement, he must reside upon the land during the pendency of the controversy; and should he fail to do so, the entryman, if he in the meantime continues residence thereon, will have the superior right.

38-275

9. A party who settles on land covered by the entry of another, under an agreement with the prior entryman that such entry shall be relinquished for his benefit, acquires no right as a settler as against the intervening entry of another, made on the relinquishment of the prior entry, if he fails to secure the release of said land through contest or in the manner agreed upon.

22-490; 28-369

10. One who goes upon land covered by an existing entry, with intent to acquire the same as a homestead, and purchases the relinquishment of said entry, together with the improvements and household effects of the entryman, and thereupon assumes possession of the premises, initiates a right superior to the claim of another who, with full knowledge of said facts, subsequently, and prior to the filing of the relinquishment, settles on said land.

28-547

11. The failure of a settler to assert his right within the statutory period, and consequent loss of priority as against an intervening entry, does not preclude the assertion of his right as against a subsequent entryman, where said settler remains on the land and the intervening entry is canceled.

19-421

12. During the period in which the local office is closed time does not run against a settler in the matter of asserting his claim.

18-543

13. The right to be heard on an allegation that claim of, is not asserted within the statutory period can only be accorded the "next settler," and will not be recognized when set up by a State claiming under a selection.

15-93; 35-171; 39-282

14. Rights extinguished by Executive order creating reservation.

1-30, 450, 451; 8-502

15. Acts of, to be received as such must be followed within a reasonable time by the establishment of residence.

4-339; 18-543

16. Will not be held to relate back to the alleged initial act, if such act is not followed by substantial and *bona fide* acts of settlement and improvement.

23-87

17. Rests on acts performed in person by the party claiming the benefit thereof.

8-623; 11-175; 13-142; 26-616

18. Mere personal presence on public land, without the performance of acts connecting the claimant with the land, is not a, within the meaning of the law.

22-642

19. Priority of, must be determined by acts performed indicative of the settler's intent, and not by priority of presence on the land, or declarations of intention to settle thereon.

24-499

20. Act of, complete from the instant the settler goes upon the land with the intention of making it his home and performs some act indicative of such intent.

2-628; 3-294; 8-176;

10-25, 382; 12-115

21. Act of, is sufficient if it tends to disclose a design to appropriate the land in accordance with the law.

12-415; 22-310

22. An alleged act of, set up to establish priority of right as against an adverse claim, can not be accepted as sufficient, if said act is not of a character to give notice of the settler's claim.

24-315

23. Consists in substantial improvement, permanent in character, with intent to appropriate the land.

3-162, 295; 20-452

24. Must be made in person upon unappropriated land.

3-380

25. As between parties claiming priority of, preference must be given to the one who first performs some act on the land indicative of an intent to appropriate the same.

23-74

26. "Picking" a small patch of ground and erecting a cross are not acts of.

3-162

27. Priority of, accorded to one who first reaches the land and puts up a stake thereon, with the announcement of his claim, where such act is duly followed by the establishment of residence.

17-162

28. Setting stakes to mark the foundation of a house will not be considered an act of, where the stakes are so small as to be scarcely visible, and hence do not serve as notice of a claim.

20-452

29. Going upon the land may be properly regarded the initial act of, as between

parties that make the race at the hour of opening Oklahoma lands, and are aware of a common intent to settle on the same tract. 25-273

30. The conditions attendant upon opening lands in Oklahoma require the recognition of extremely slight acts of, in determining priorities between adverse claimants. 23-10; 24-92; 27-519

31. Under the conditions attendant upon the opening of lands to, in Oklahoma the sticking of a stake may be recognized as initiating a right, as against competing settlers on the day of opening, but such act will not be available as against subsequent settlers if not followed, within a reasonable time, by additional acts of. 24-358; 27-458

32. The rule recognizing slight acts of, as between parties making the run for Oklahoma lands on the day of opening, is not applicable to the ordinary case of a party who claims priority of. 24-476

33. By driving stakes to indicate the site of a house at a time when he admits the right to the land to be in another, one does not perform an act of settlement. 2-184

34. The erection of a "claim stake" with the description of the land thereon is not such an act of, in itself as will authorize a preemption filing. 13-480

35. Not effected by the arrangement of a few logs in the form of a square. 2-26; 3-449

36. Digging a small hole in the ground is not such an act of, as will confer priority of right as against one who, without knowledge of such act, subsequently makes settlement on the land in good faith. 19-122

37. Placing building material on public land with intent to use the same is an act of, that will be protected if followed up with reasonable diligence by the actual construction of a house. 15-231

38. Going on the land and erecting thereon a board with a statement of his claim upon it and then leaving the Territory is not a good settlement. 2-621

39. Long-continued occupancy of land as a home and the cultivation and improvement thereof are acts that indicate an intention to claim the land under the settlement laws. 10-637

40. On public land by qualified settler presumptively made with the intention of entering the same under the settlement laws. 12-547

41. Rights not obtained by occupation as tenant. 3-46; 4-259, 412; 10-582

42. No rights acquired by one who remains on public land through the consent of others and without asserting any right of his own or performing the acts required of a settler. 10-510

43. One who is occupying land as the tenant of an entryman acquires no right as a settler, on the relinquishment of the entry, that can be set up to defeat the intervening entry of another. 11-178; 28-395

44. The rule that settlement rights can not be acquired by the tenant or employee of another which can be set up to defeat intervening rights, is not applicable in all cases where the relation of landlord and tenant is established, and should never be extended to cases where the relation of tenant was assumed merely for the purpose of protecting settlement rights and in furtherance of a *bona fide* intention on the part of a settler to assert his rights at the first opportunity. 34-257

45. One who is residing on land as the tenant of another, may, on the termination of such relation, acquire a valid settlement right by remaining thereon and improving the same with the intent to make it a permanent home. 11-72, 284

46. A claim based on, can not be initiated by one while holding public land as a tenant of another; but if the settler makes entry of the land his rights may be regarded as legally initiated on the date of said entry. 18-361

47. One who enters upon land as a representative of another and remains thereon in such capacity is not a settler within the meaning of the preemption law. 11-63

48. Possessory rights to public lands, acquired by settlement, may be the subject of lease; and the lessee in such case can establish no claim in his own right as a settler adverse to his lessor. 32-526

49. Acts done as an agent are not acts of settlement. 2-173, 175

50. No one can acquire a settlement right on public lands through acts performed by an agent. 2-188;

6-521; 15-69; 17-501; 19-91; 26-616

51. Can not be maintained through the occupancy of a tenant. 17-561

52. Settlement and residence can not be established by an agent nor maintained by an agent or tenant after having been established. 32-190

53. Where one went upon public land as the tenant of another who has absented himself without claim to it he may make entry of it in the absence of fraud. 2-135

54. Must be the act of the claimant himself, and the rights dependent on it are not enlarged by the prior settlement and occupation of another who has sold his preemption right to the claimant. 2-560

55. An agreement between two settlers on the same quarter section, who have in effect recognized a partition of the land as between themselves, that the abandonment of either shall inure to the benefit of the other, can not operate to defeat the right of an intervening settler, in the event of such abandonment. 27-575

56. Rights not acquired by one who enters upon and retains possession of land under contract of purchase from another. 8-207

57. Rights are not acquired by the purchase of the possessory right and improvements of another. 2-188;

8-623; 9-329, 13-142; 14-90; 15-69; 18-446; 19-91, 237; 26-616; 27-629

58. Sale of improvements by one holding a possessory claim while conferring no right under the settlement laws is not in violation thereof. 9-139; 19-91

59. The purchase and repair of improvements made by a prior settler constitute a good settlement. 3-354

60. The purchase of improvements is equivalent to making the same if the purchaser makes his home on the land. 3-100; 4-56; 5-239; 13-726

61. The assertion of a possessory right to land does not confer any right thereto under the settlement laws. 7-165

62. In the absence of actual, the ownership of improvements on public land or the use of such land for ranch purposes does not confer any right under the settlement laws. 10-276

63. Based on forcible intrusion confers no right. 1-424; 4-388,

411, 501; 5-377; 13-209; 18-326; 22-266; 24-343

64. Rights to the detriment of one in possession under color of title can not be acquired by acts of trespass. 7-68, 92

65. No rights are acquired under the settlement laws by trespass on the undisputed and known possession of another who believes his title to be good. 21-362

66. On land covered by the open and notorious occupancy and possession of another is with notice of any rights that may exist in the prior occupant. 11-191

67. Rights of, can not be acquired by trespass, nor constructive possession of such land by settlement on an adjacent tract. 14-475

68. And residence of one who fails through mistake to include the land within his entry will be protected as against the subsequent occupation of another who takes forcible possession with full knowledge of the facts. 11-394

69. A growing crop of grain on land is quite as much notice of possession as an inclosure thereof. 7-92

70. Ruling in *Atherton v. Fowler* applicable only in case of forcible intrusion. 4-140, 388

71. The *Atherton-Fowler* doctrine is not to be extended to cases where the prior settler is a mere trespasser or has disregarded statutory requirements. 1-423, 424; 2-45

72. Made by going upon public land and taking possession of an apparently abandoned dwelling house is not within the rule laid down in *Atherton v. Fowler*, where the owner of such dwelling makes no objection as to such occupancy, and the settler subsequently purchases said building of him. 27-569

73. Rights based on unlawful possession can not be set up as against the lawful appropriation of another. 4-560

74. Made peaceably upon an uninclosed part of a forty occupied by a prior settler is lawful. 2-630

75. The validity of, as affected by its having been made within the inclosure of another, can not be questioned by one who at such time had no interest in the land, nor in the improvements thereon. 19-563

76. Made without violence within the unlawful inclosure of another is valid and will not be defeated by said unlawful occupancy. 7-340;

9-455; 12-382, 488; 29-362

77. May not be prevented by the maintenance of an illegal inclosure of public land. 13-702

78. The Atherton-Fowler doctrine applies to a case where a *bona fide* homestead entry and improvement of a quarter section gave a legal possessory right which the entryman continuously asserted under color of law, even after relinquishment of the entry for the purpose of changing it to a timber-culture claim. 2-44

79. A settled in July, 1881, on land not subject to homestead or preemption, and thereafter resided on and improved it; the land was opened to settlers on December 14, 1882; on January 6, 1883, B made homestead entry, and on March 15, 1883, A filed preemption declaratory statement, which was rejected by the local office because of B's claim of record and A's failure to file as required by law; B's entry was relinquished April 23, 1883, and on the same day C made homestead entry; held that A was protected by the rule in *Atherton v. Fowler*. 2-597

80. Where one makes entry (homestead) of a tract, but settles on another intentionally and fails to use diligence in appropriating it lawfully (amended entry), he is a trespasser on the second tract, and a third person is not bound by notice of his homestead settlement and improvements. 2-576

81. Begun clandestinely and residence maintained by fraud and violence confers no right. 3-192

82. Under contract with supposed owner not trespass. 5-239

83. Priority of right may be properly accorded a settler, who, under an agreement with an adverse claimant, goes upon a tract with the knowledge and consent of such claimant. 17-187

84. Improvements existing upon an abandoned claim are no bar to settlement. 3-100

85. Peaceable settlement may lawfully be made on a part of a forty already set-

tled on by another, but not in his actual possession by inclosure or otherwise. 2-630

86. Rights acquired on lands prior to an order withdrawing the same from entry are held in abeyance during the existence of such order, but may be exercised when it is vacated. 19-48

87. Rights on land formerly covered by railroad indemnity withdrawal recognized after revocation of the withdrawal. 6-382

88. On lands withdrawn for railroad purposes takes effect on revocation of the withdrawal. 8-355; 13-145; 26-538

89. On land withdrawn for the benefit of a railroad grant confers no rights. 6-543; 8-355, 570; 10-85; 13-432; 14-369; 15-91; 17-34; 19-275

90. On lands subject to the operation of a railroad grant confers no rights. 11-91

91. Confers no right to land embraced within a railroad indemnity selection pending an appeal. 14-418

92. A settler on land reserved for railroad purposes is entitled to three months from date of restoration of land in which to make filing and protect his right as against a subsequent settler. 14-230

93. No rights of, acquired on lands reserved by competent authority. 2-521, 604; 10-513

94. Settlements on land reserved from entry confer no rights as against the Government, but the question of priority between such settlements may be considered in determining the rights of adverse claimants in case the land is subsequently opened to entry. 32-190

95. On land reserved for a public highway, along a section line, as provided under section 23, act of May 2, 1890, prior to the actual location and use of such highway, is valid and extends to the adjacent quarter section on which settlement is intended to be made. 24-160

96. No rights acquired by, where the land is included within a reservation created by Executive order. 12-437

97. Land included within a pending order for its sale as an isolated tract is not subject to. 12-397; 14-458

98. Not effective if made on land covered by an entry or otherwise appropriated. 1-52;

2-89; 3-344, 553, 562;

5-147, 238; 8-243; 19-526

99. Rights not acquired on land subject to Indian occupancy. 13-269,

302, 578; 14-300

100. Lands actually included within Indian occupancy are not subject to.

3-371; 6-341; 16-14, 209

101. On military reservation with knowledge of the existing reservation not legalized by the act of July 5, 1884.

10-489

102. On appropriated tract no basis for claim to adjoining appropriated land.

5-289

103. On land covered by an entry must be accompanied by residence or other evidence of occupation in order to take effect on cancellation of the entry. 2-26, 123

104. On land embraced within the entry of another confers no right as against the entryman or the Government. 6-248,

330, 709; 7-212; 18-3; 19-467; 20-147

105. The right of a settler who is residing upon a tract of land under the belief that his title is complete under a prior patent, to enter said tract on the relinquishment of a record entry thereof, is superior to, and will defeat an intervening entry, made with knowledge of the adverse claim. 25-135

106. Upon land covered by the entry of another confers no right as against the entryman who complies with the law.

8-227

107. On land covered by an entry confers no right as against the record entryman, but as between subsequent claimants the settlement first in time is entitled to the highest consideration on cancellation of the existing entry. 11-284;

20-452; 25-37, 448

108. Priority of, may be considered as between settlers on land covered by the subsisting entry or appropriation of another. 4-410;

5-147, 239, 361; 6-248,

330, 709; 7-212; 14-90

109. No rights can be acquired by acts of settlement as against an entryman claiming under a prior record entry, but

as between subsequent claimants the prior actual settler is entitled to precedence upon the cancellation of the entry or extinguishment of the record title. 34-257

110. In determining conflicting claims of, on railroad lands restored by the forfeiture act of March 2, 1889, acts of settlement prior to such restoration may be considered. 18-392

111. On railroad lands restored to the public domain by the act of March 2, 1889, after the passage of said act, and prior to the time when such lands were opened to entry, is protected as against the intervening entry of another, if the right of such settler is asserted within the statutory period. 26-288

112. The right of one who is residing on a tract of land embraced within a railroad indemnity selection at the date of the cancellation thereof, and thereafter applies within three months of such cancellation to make entry, is superior to any adverse claim made after said cancellation. 28-431

113. On the Northern Pacific right of way is not a settlement on public land, and hence confers no right under the settlement laws. 28-412

114. Acts of, on land held in reservation confer no right against the Government, but may be considered in determining the priorities of subsequent claimants. 9-89;

11-497, 452; 13-214; 17-171; 19-1

115. On land withdrawn for railroad purposes confers no right as against the Government, but may be considered in determining priorities between adverse claimants where the land is subsequently restored. 15-583

116. Acts of, performed in direct violation of a departmental order opening lands to entry can not be considered in determining priorities between conflicting applicants for the same tract. 16-302

117. Settlers who, without authority of law, enter upon lands that are held in reservation under departmental instructions that expressly forbid all settlers from entering thereon, until lawful permission is given, acquire no equities thereby.

17-369; 18-176, 482, 486; 22-276

118. Settlement in advance of the hour of opening, in violation of an order of

the Land Department prohibiting such settlement, confers no rights as against the first legal applicant to enter after the hour of opening, and such settler can not, by virtue of his mere presence upon and occupancy of the land after the hour of opening, with the improvements made prior to that time, secure a settlement right.

34-524

119. Presence upon a public road running through lands is equivalent to presence upon the land, and one who in violation of instructions makes settlement from such point of vantage immediately at the hour of opening is not entitled to assert a superior right by reason thereof as against another who made entry for the same tract one minute after the hour of opening.

36-323

120. One who in violation of instructions passes over a portion of lands to be opened to settlement and entry prior to the hour fixed for the opening, in order to take a position upon a tract held in private ownership within the area to be opened, with a view to thereby acquire a point of vantage from which to make settlement, and makes settlement therefrom immediately after the hour of opening, does not thereby acquire any right as against another who was standing in line at the local office and made entry for the same tract shortly after the hour of opening.

38-571

121. In the case of, on land that is treated as in reservation by the department, when under the law it was open to settlement, the rights of claimants should be determined on the priority and good faith of their respective settlements, and their compliance with law in placing their claims of record after the land is declared open to entry by the department.

25-420

122. The right of persons alleging, on lands opened to such appropriation under the act of September 29, 1890, is not affected by the fact that such lands were at the time of settlement and application therefor, reserved from disposal under the departmental rulings then in force.

25-394

123. Acts of, on land within a railroad grant may, on the forfeiture of said grant and restoration of the land, be considered

in determining priority between two settlers.

6-709

124. One who settles on patented lands can gain no right thereto while the patent is outstanding; but if the patent is subsequently vacated, and the lands become subject to, as part of the public domain, the right of such settler will attach from such time, and must be protected, if duly asserted.

26-350

125. Made on the reservoir lands opened by act of June 20, 1890, after the beginning of the specified calendar day and prior to the entry of another on the same day defeats the right of such entryman.

15-302; 16-306; 18-409

126. One who knowingly enters and occupies the lands opened to, by the act of June 20, 1890, prior to the time fixed therefor, is disqualified thereby, though outside of the boundary when said lands were opened.

18-550

127. One who purposely enters upon the reservoir lands, restored to the public domain by act of June 20, 1890, prior to the time fixed therefor, and goes upon the tract subsequently selected, is thereby disqualified to make homestead entry of said land.

18-133; 19-191

128. One who enters in person or by agent, during the inhibited period, upon the reservoir lands opened to settlement by the act of June 20, 1890, for the purpose of securing information with respect to said lands, is thereafter disqualified as an entryman.

22-324

129. A settler who enters upon the lands opened by act of June 20, 1890, prior to the day fixed therefor for the purpose of selecting a tract is disqualified to enter said tract under section 3 of said act though settlement is not actually made until the lands are subject thereto.

16-306; 18-581

130. One who enters upon the reservoir lands restored to the public domain by act of June 20, 1890, prior to the time fixed therefor, and remains thereon until said lands are subject to settlement, is disqualified as a settler under said act.

17-364

131. No new act of, required of one on land at the date of its becoming subject to.

1-444, 445; 5-250

132. On land covered by entry takes effect *eo instanti* on the cancellation of the same. 1-112, 443; 4-447; 11-197

133. The right of a settler who is residing on land covered by an entry of another attaches *eo instanti*, on the cancellation of said entry, without any specific act of settlement on his part at such time, if he is then in possession of said land. 20-147

134. Right of one resting on land covered by the entry of another attaches *eo instanti* on relinquishment of said entry, and is superior to the right acquired by an entry made immediately after said relinquishment. 6-246; 18-538; 19-523

135. Where the settler is in good faith on land covered by the entry of another, prior to the cancellation of the existing entry, his temporary absence from the claim, at the instant of relinquishment, will not defeat his settlement right. 19-526

136. Status of adverse existing settlement in case of simultaneous relinquishment and application. 4-125

137. A settled in 1879 and filed April 20, 1880; B settled on April 27, 1880, and filed two days after; A relinquished May 14 and made homestead entry May 17, 1880; held that B's settlement took effect on relinquishment. 2-620

138. The right of a settler on land at the time of the cancellation of a prior entry thereof, if asserted within the statutory period, will not be defeated by an adverse intervening application to enter. 27-186

139. A claim resting upon settlement made in good faith and followed by the establishment and maintenance of residence upon a tract of land embraced within an existing entry attaches immediately upon the cancellation of the entry upon relinquishment, and is not defeated by the filing of a soldiers' additional application covering the same land, even though the settler may not assert his claim until after the expiration of three months from the date of the cancellation of the entry. 35-285

140. On land covered by the entry of another takes effect at once upon the relinquishment of such entry to the exclusion

of rights claimed under an application to enter filed with the relinquishment. 13-148, 192; 15-542

141. Right of a settler on land covered by the timber-culture entry of another, on relinquishment of such entry, is superior to the entryman's claim under a homestead application filed with said relinquishment. 14-439

142. As between one who has a subsisting settlement upon a tract of land embraced in an invalid Indian allotment at the date of the cancellation of the allotment, and one who immediately upon such cancellation files application to make homestead entry of the land, without having made settlement thereon, the right of the settler is superior to that of the applicant. 33-494

143. Made subject to the right of a successful contestant defeats the subsequent entry of another who files a waiver of the contestant's preferred right. 15-443

144. On unsurveyed land that is subsequently included within the desert-land entry of another, will defeat the preference right of one who successfully attacks said entry, if duly asserted on the survey of the land. 27-594

145. On cancellation of an entry under contest a *bona fide* settler then on the land is entitled to the right of entry as against every one except the successful contestant. 8-597

146. In the case of a successful contest, where the contestant waives his preferred right and a third party makes entry of the land, the former entryman can not defeat such entry on the ground that he was residing on the land at the time said entry was allowed, if he fails to assert his settlement claim within three months after the waiver of the contestant's preferred right. 27-592

147. On land covered by the entry of another is subject to the superior right of a contestant who secures the cancellation of such entry. 9-269

148. On land covered by the entry of another, confers no right as against a successful contestant who secures the cancellation of such entry. 24-221, 432

149. While as between two parties claiming the same tract, the right of one as a settler may not defeat the superior right

of the other as a successful contestant, yet if such contestant thereafter enters the land and relinquishes the entry, such settlement right, if maintained, will defeat the subsequent entry of a third party.

24-49

150. The cancellation of an entry as to part of the land covered thereby, on account of an adverse claim, will not prevent the entryman from subsequently asserting his right as a settler to the entire tract covered by his original entry, as against a third party.

24-342

151. Acts of, performed while the land was not subject thereto may be considered in determining the question of good faith.

6-636

152. A canceled entry is no bar to the subsequent acquisition of settlement rights by another.

12-488

153. Prior to survey confers no vested interest in the land.

8-541

154. A settler on unsurveyed land is charged with notice of the filing of the plat of survey and the opening of the lands embraced therein to entry.

18-214

155. Prior to survey, marked by distinct boundaries, may not be enlarged to the injury of subsequent settlers.

1-414, 431

156. Where valuable improvements exist on one forty, and three others adjoining were regularly cultivated and part of a fifth forty accidentally, there is no claim to the fifth forty.

2-589

157. Upon unsurveyed land should be of such character and so open and notorious as to be notice to the public of the extent of the claim.

3-76;

9-38; 10-234; 19-91; 27-365

158. Notice by a prior settler to another to keep his stock away from a tract valuably improved by the former is sufficient notice of claim to the forty on which said improvements are found by the survey to be.

2-588

159. A notice to a settler before survey of a contingent claim on the part of one who has not reduced the land to possession, nor placed any improvements thereon, will not serve to defeat the right of the settler.

20-338

160. And improvement before survey on land included within the known settle-

ment right of another are invalid as against the prior settler. 1-414; 8-630

161. Notice of a claim is not the basis of title; and where settlement is relied upon as the basis, failure to maintain same may be taken advantage of by a later settler although he may have notice of the prior claim.

27-163

162. In good faith prior to survey will be protected as against a subsequent adverse claim made and maintained with full knowledge of the facts.

18-309

163. The right of a settler to enter the land covered by his improvements is not defeated by the fact that prior to survey he incorrectly designated the land actually claimed.

16-56

164. Written notice of a settlement claim is of no validity in the absence of the settlement and residence required by law.

16-12

165. Actual notice of the extent of a claim made by, will protect such claim as against the entry of another.

11-404

166. One who definitely declares the extent of his claim is estopped from subsequently claiming a larger tract to the injury of one who relies upon such declaration.

13-198

167. A notice of a possessory claim, given prior to survey in the field, will not estop the settler from afterwards making his entry conform to the legal subdivisions, in such manner as to include the land actually settled upon by him, as against settlers whose rights are acquired after such survey.

28-412

168. Conflicting rights acquired by, may be adjusted by an equitable apportionment of the land, though one of the parties may have settled after survey.

18-297

169. Conflicting rights acquired prior to survey may be adjusted through an entry made on the agreement of either party to convey to the other the land covered by his occupation.

13-19; 20-490; 21-224

170. Conflicting rights acquired prior to survey adjusted through agreement of the parties.

6-826; 7-3; 8-536

171. In case of conflicting claims arising through settlement before survey the rights of the parties may be equitably adjusted.

18-335

172. Joint entry allowed in case of conflicting settlements before survey. 2-104, 150, 588; 3-609; 4-520; 5-605; 6-138, 826; 7-3; 8-536; 10-234

173. Questions as to priority of right, or adjustment of rights, acquired by, prior to survey, can only arise where the settlement is made prior to the survey in the field. 28-412

174. Conflicting rights of, acquired after survey in the field and before the filing of the plat, must be determined by actual priority of settlement and the good faith of the parties. 28-510

175. Should be so marked in the matter of improvements as to give notice of the extent of the settler's claim. 5-372; 6-324

176. The notice given by improvements and, extends only to the quarter section as defined by the public survey. 5-141, 556; 6-151, 172; 7-76; 13-134, 480; 16-12, 248; 18-356; 23-50; 25-394

177. Notices, defining the extent of a claim, posted on subdivisions thereof outside of the technical quarter section on which the improvements are placed, are as effectual in notifying subsequent settlers of the extent of said claim as improvements placed on the different subdivisions. 17-197; 25-420

178. A posted notice of a claim that covers land in different sections will not protect such claim for subdivisions outside the section on which said notice is posted, as against a subsequent applicant who is without knowledge of such posting. 29-197

179. Posted notices of the extent of a claim, that embraces land in fractional quarter sections, placed on the subdivisions not occupied and improved by the settler, serve to protect his priority of right thereto. 29-197

180. Notice of a settlement claim, posted conspicuously on the land, is sufficient to protect the claim against one who subsequently makes application for a portion thereof under the timber and stone act, whether the timber-land applicant has actual notice of the settlement claim or not, provided the posted notice was of such character that it might have been seen by a reasonable exercise of diligence. 34-90

181. Notice of a settlement claim, posted on a subdivision thereof *outside* of the technical quarter section on which the improvements are located, will protect the settler's claim to such subdivision as against the claim of one who subsequently makes application therefor under the timber and stone act. 34-90

182. Rights acquired by settlement and improvement upon unsurveyed land, and duly and timely asserted upon filing of the plat of survey, will, as against an intervening indemnity railroad selection, made under the act of August 5, 1892, be protected in its entirety, even though the lands claimed lie in different quarter sections and the improvements of the settler are shown to be confined to a single quarter section. 32-8

183. Rights acquired by settlement and improvement upon unsurveyed land, and duly and timely asserted upon the filing of the plat of survey, will, as against an intervening indemnity railroad selection made under the act of August 5, 1892, or a lieu selection under the provisions of the act of June 4, 1897, made long prior to the filing of the township plat of survey and with full knowledge of the settlement claim, be protected in its entirety, even though the lands claimed may be in different sections and the improvements of the settler be confined to the lands in one section. 33-513

184. In the case of a claim for land in different fractional quarter sections, and surveyed as lots, the notice of the extent of the claim, given by occupancy and improvement, is limited to the particular lots occupied and improved. 29-197

185. A claim of notice of a settlement right by reason of improvements on the land will not be heard as against an adverse claimant, where, at such time, the settlement and posted notice of the party claiming such benefit of said improvements show the assertion of a settlement right to another quarter section. 23-527

186. The departmental ruling that the notice given by, extends only to the quarter section on which the settlement is made, is general in its application, and covers a case of settlement on a tract that has public land on one side only. 17-522

187. Actual notice of the extent of a claim will protect such claim as against the subsequent entry of another, when such notice is supported by actual settlement and improvements upon contiguous land. 17-343

188. Notice defining the extent of a claim posted in conspicuous places thereon will protect such claim as against subsequent settlers; and it is immaterial whether the later settler has actual notice or not, if the posted notices are of such a character that they might have been seen by a reasonable exercise of diligence. 17-454

189. A settler who seeks to acquire title to land lying in different sections by virtue of, must show acts of, extending to the tracts in each section. 19-48

190. The notice of a claim given by improvements on unsurveyed land extends only to the technical quarter section on which said improvements may be found. 20-338

191. The fact that land is subdivided into 40-acre tracts does not operate to confine a settlement right to the subdivision on which the, is actually made; but notice of a settlement right, as given by improvements, is limited to the quarter section on which such improvements are situated. 20-392

192. The improvements of a settler on unsurveyed public land are notice of his claim to the full extent of the technical quarter section upon which they are found, upon survey, to be located, and he is not required to give additional notice of the extent of his claim, by improvements or otherwise, upon each 40 acres of the tract claimed. 35-282

193. In the absence of special statutory authority therefor, public lands can only be disposed of according to legal subdivisions; and it follows that the right obtained by settlement upon a given legal subdivision extends to the whole of that subdivision. 28-412

194. On land not subject thereto does not operate as notice, constructive or otherwise, of a claim to other land in the same quarter section. 26-264

195. A settlement upon land not subject thereto may not be imputed as an authorized settlement upon an adjoining legal

subdivision within a different technical quarter section, as against an intervening adverse claim lawfully initiated. 39-371

196. Slightly marked on heavily timbered land is not notice as to the extent of the claim outside of the quarter section settled upon. 4-73

197. Does not extend to noncontiguous tracts. 6-621

198. A placer mining claim so located as to interpose between different parts of a legal subdivision does not render a settlement claim embracing such subdivision noncontiguous. 32-522

199. Recognized though made outside of inclosure where the sectional subdivision extends inside of the inclosure. 1-429

200. And improvement extend constructively to all parts of the quarter section claimed by the settler. 14-54

201. Made by a minor not the head of a family secures no right to public land. 14-290; 26-31

202. As between two settlers on the same tract, one of whom is qualified and the other disqualified by reason of minority, the existing adverse right of the former precludes the claim of the latter on attaining his majority, as against the right of said qualified settler. 22-258

203. Of an alien confers no right under the public-land laws. 1-489;

4-139; 6-485; 10-463; 11-89; 354; 12-507; 14-664; 24-60

204. Of an alien becomes valid from the date of filing declaration of intention to become a citizen. 6-485

205. Of an alien relates back to settlement on subsequent naturalization in the absence of any intervening right. 14-568

206. Of an alien is made good by a subsequent declaration of intention to become a citizen filed prior to the intervention of a valid adverse claim. 13-182, 242

207. Of an alien on unsurveyed land protected through his subsequent declaration of intention to become a citizen and declaratory statement filed when the land became subject thereto. 8-536

208. Of an alien is ineffectual, and his right will not relate back on subsequent qualification to defeat the intervening claim of another. 11-354

209. Where rights are claimed under the acts of one who is an alien by nativity

it must be affirmatively shown that the disqualification in the matter of citizenship was removed during the existence of the alleged settlement. 12-507

210. Of one becoming qualified to make, while on the land dates from such time. 1-441

211. Right set up to defeat the entry of another must fail unless the qualification of the settler to make entry is made to appear. 12-684

212. One disqualified to initiate a valid settlement right can not claim the privilege of having his status as an entryman determined as of the date of his application for the purpose of protecting such invalid settlement right; the right will only be protected from the date the impediment to its initiation is removed and the right attaches, and if before that time a superior right intervenes it will be recognized and protected. 35-71

213. One who at the time he performed an act of settlement upon which he relies as entitling him to a prior right of entry is disqualified as an entryman by reason of having an entry, not actually abandoned, then of record, is disqualified to make a valid settlement and can therefore gain nothing thereby as against the valid adverse right of another asserted prior to the removal of such disqualification. 35-71

214. A settler is bound to take notice of established priorities. 4-170, 306

215. Where entry and, are simultaneous the settler will be recognized as having the superior right. 18-133

216. Where made prior to the hour at which the adverse entry of another is allowed the right of the settler is superior, though the entryman was at the local office before such settlement, and only prevented from making his entry then by the number of prior applicants in attendance at said office; but the right of the settler will be limited to the technical quarter section on which his settlement is made. 18-380; 28-243

217. One who makes immediate settlement at the hour of opening, upon lands opened to "settlement and entry," has a superior right over another who at that hour was standing in line at the local

office but who on account of his position in the line did not make entry until shortly after the opening hour. 36-162

218. As between two applicants for the right of entry where the question of priority depends upon the time of, on the part of one, as against the time of application by the other, the settler will be given the precedence, if it can not be satisfactorily determined that the adverse application was regularly tendered prior to the act of settlement shown, and entitled to consideration at such time. 28-267

219. Where a settler has properly initiated a claim to a tract of which he has retained possession, though he has failed to do the things necessary to the acquisition of title, another settler on an adjacent tract can not, by a merely verbal claim or without attempting to reduce the tract to possession, acquire any right to it. 2-186, 637

220. Right of settler not affected by the wrongful removal of his dwelling house by an adverse claimant. 4-139

221. Rights in conflict adjusted equitably where the legal status of the claimants is the same. 6-152

222. Where two settlers were on land covered by desert entry at the date of its cancellation a partition of the land was directed. 3-72

223. Where two claimants settle simultaneously, and place their improvements on the same 40-acre subdivision, the tract may be awarded to the highest bidder of the two applicants. 20-392

224. In a case involving priority of, wherein it can not be determined which of the parties was the first settler in fact, the claimants may make an amicable division of the land; or, in the event of their inability to agree, the right to make entry may be awarded to the highest bidder. 21-485

225. If the parties can not agree to a division of the land in a case wherein the priority of, can not be determined by the evidence, the land should not be divided between them by a departmental order, but the right of entry to the entire tract awarded to the higher bidder of the two. 22-517

226. A finding of simultaneous, does not justify an arbitrary division of the land.

23-201

227. There is no authority, in case of simultaneous settlements, for dividing the land between the parties, without their agreement and consent.

32-313

228. There is no authority under the law, in cases of simultaneous, for offering the right of entry to the highest bidder.

23-201, 400

229. In a case wherein priority of, is the issue, any period of time susceptible of notation intervening between the acts of, on the part of the adverse claimants, and which is noted with sufficient distinctness to separate said acts by a recognized period, will prevent the consideration of said acts as simultaneous.

22-382

230. Right can not be acquired or maintained on different tracts at the same time.

8-96, 200, 461; 9-63

231. Rights under different laws can not be maintained for different tracts at the same time.

10-419; 19-516

232. One who secures a patent to land by alleged compliance with the settlement laws will not thereafter be heard to say, in support of another settlement claim covering the same period of time as the first, that in fact he did not actually reside on the patented tract.

27-480

233. On land for the purpose of securing the timber thereon, and not for the purpose of a home, is not *bona fide*.

7-555

234. Rights on timber land recognized by the act of June 3, 1878.

6-691

235. On lands chiefly valuable for their timber and stone should be carefully scrutinized.

7-555

236. No rights are secured by a, made for the purpose of securing the timber on the land and not for the establishment of a home.

24-272

237. Not necessarily speculative or fraudulent because made near prospective townsite.

3-434

238. Right of, can not be acquired on land that is embraced within a prior townsite claim even though said land may not be at such time actually occupied for townsite purposes.

15-324

239. Made ostensibly for the purpose of securing a homestead, but in fact with a

view to speculation in town lots, is lacking in good faith, and should not be accepted as the basis of a homestead entry.

23-87

240. Made with the intention to secure title under section 2287, R. S., and without residence on the land, is not in good faith and does not authorize a purchase under said section.

11-18

241. Right not established on a showing that the tract is included within a large body of land improved and occupied as a whole for a cattle ranch.

11-463

242. Taking possession of and improving land, relying upon the erroneous statement of an attorney, without initiating legal claim to it, gives no right against soldiers' additional homestead entries subsequently allowed.

2-56

243. Priority of right should be determined on hearing as between preemtor and homesteader.

5-526; 8-528, 623

244. An allegation of, subsequent to that set up in support of a prior adverse entry does not afford any basis for a hearing as against the right of the prior entryman.

19-507

245. Circular of July 1, 1879, declaring invalid entry on land in the possession of a settler, protected the contestant under it until it was revoked.

2-66

246. *Bona fide* settlement or improvement on land bars a subsequent application under the timber and stone act.

2-336

247. Were not protected by filing or entry through the fault of another such person may not take advantage thereof.

4-158

248. One who induces another to settle on a tract of land is thereby estopped from alleging a prior right in himself.

21-224

249. Acquired with the knowledge of and under an agreement with an adverse claimant is entitled to recognition as against the subsequent claim of said adverse claimant.

22-646

250. Not required of desert-land applicant and confers no right under the desert-land act.

3-326, 331

251. Confers no right under the timber-culture law.

15-513

252. The Land Department has full authority and jurisdiction, either on its own

motion or at the instance of others, to inquire into the *bona fides* of a claimed settlement upon public land, notwithstanding the land is yet unsurveyed and no entry based upon such settlement claim has been allowed. 40-429

II. Homestead.

See HOMESTEAD, XIII.

253. Rights of settler relate back to, under the act of May 14, 1880. 1-84; 6-653; 33-386

254. Settlement prior to act May 14, 1880, could inure to the settler's benefit only under section 2273, R. S. 2-575

255. The act of May 14, 1880, is not retroactive, so as to cut off a valid adverse interest which had attached prior to its passage. 2-575

256. Of homesteader only protected by the act of May 14, 1880, for the statutory period as against intervening settlement rights. 5-624; 6-306; 18-214

257. The provision of section 3, act of May 14, 1880, according to settlers upon public lands a period of 90 days after the land had become subject to entry, filing and selection within which to file applications to enter, gives a preference right to the land, but no preference in the order of filing or adjudication of right or claim. 37-476

258. Priority of, as against an intervening entry, should be asserted by contest initiated within three months after settlement. 29-201

259. An intervening adverse entry defeats a prior settlement right if such right is not asserted within the statutory period. 22-77

260. The failure of a settler to make entry within a statutory period can not be excused on the ground of poverty, in the presence of an intervening adverse entry made after the right of such settler has expired by limitation of the statute. 28-86

261. Where the homestead right is initiated by settlement upon unsurveyed land under act of May 14, 1880, and the homesteader dies prior to survey, having complied with the law to the date of his death, his heirs are entitled to complete the claim and acquire title. 33-219

262. Where a settler upon unsurveyed land dies prior to survey, after having resided upon and cultivated the land for five years and therefore become entitled, upon making entry and final proof, to a patent, and his widow, after his death, continues to assert the right, she is entitled, upon filing of the plat of survey, to make entry and proof and complete title to the land. 39-279

263. Conceding that the time within which a settler must assert his claim under the act of May 14, 1880, will not run while the land is embraced within a pending indemnity selection, yet if such selection is subsequently relinquished, and the intervening entry of an adverse claimant is allowed, it is then incumbent upon such settler, as against the adverse claimant, to present his claim by contest or otherwise within three months thereafter. 26-390

264. Where an order canceling a list of railroad indemnity selections provides that no disposal of the lands shall be made until pending applications therefor have been adjudicated, and a hearing is subsequently directed as between said applicants, at which they appear, they will not be held in default, as to the timely assertion of their settlement claims, on account of failure to make application to enter within three months after said cancellation. 29-125

265. On the allowance of an entry of land embraced within a previous indemnity selection, it is incumbent upon one claiming an adverse settlement right, by reason of residence on the land, to assert such right within three months thereafter. 29-218

266. To protect a right of, acquired before survey, against adverse claims the right must be asserted within three months after the plat of survey is filed in the local office. 22-79

267. Priority of, on unsurveyed land must be followed by maintenance of residence, and timely assertion of right, to operate as a bar to the acquisition of an adverse settlement claim. 29-30

268. A settler upon unsurveyed land who fails to assert his claim within three months after the filing of the plat of survey does not thereby forfeit his right in

favor of the State's claim to the land under its school land grant.

15-93; 35-171; 39-282

269. In the case of a claim of, that includes surveyed and unsurveyed lands, the right of the settler to make entry of the surveyed land is only protected for the period of three months from settlement as against intervening adverse claims. 28-91

270. A homestead settler claiming priority over another who has made entry must make application for the land within the prescribed period in order to obtain recognition of his rights. 2-119, 620

271. It is not necessary for the protection of a settlement claim, on land included within the prior pending application of another, that the settler should assert his settlement right by an application to enter while the land occupies such status. 28-490

272. Protected as against the intervening entry of another without formal application to enter, if the settler within three months after the land is open to entry begins a contest against said entry on the ground of his own priority. 16-266, 270; 17-345

273. A formal application to enter, made within three months from settlement, is not required to protect such settlement as against the intervening application of another, if the settler files a protest against the acceptance of said application, alleging his own priority, within three months after the land becomes subject to entry. 30-370

274. As against third parties, the settlement right of a claimant will be protected during the pendency of proceedings between such claimant and a prior entryman. 22-148

275. A homestead entryman has six months from the date of his entry within which to establish actual residence; but during such period his entry occupies the status of a settlement claim, and will defeat the right of entry on the part of a prior homestead settler who has failed to assert his claim within the statutory period. 24-522

276. A settler who files application within the statutory period after settle-

ment, but fails to secure an entry on account of a prior adverse record claim, is not in default in the matter of protecting his settlement right, where, as soon as practicable, he attacks said claim, alleging his own priority of settlement, though such contest may not be instituted until after the expiration of said period. 27-562

277. A soldiers' homestead declaratory statement does not segregate the land covered thereby, and it is therefore not subject to contest; hence the proper method of asserting a settlement claim adverse thereto is by application to make entry within the statutory period after settlement. 27-597

278. Of a homesteader protected as against other and later settlers for the period of three months only by section 3, act of May 14, 1880. 7-537

279. Followed by residence and improvement, confers a right of homestead that attaches from date of settlement, and such right is not impaired by the subsequent occupation of the land by townsite settlers on the day of such settlement. 11-330

280. Right of a homesteader will not defeat the claim of subsequent townsite settlers if not asserted and maintained in good faith after the adverse occupancy of the land for townsite purposes. 16-476

281. Under section 3, act May 14, 1880, can not be made on land covered by a desert-land entry. 2-26

282. Under section 3, act May 14, 1880, can not be made on land not subject to homestead entry (mineral). 2-35

283. The qualifications requisite on the part of a homesteader must exist at the date of entry, and if after settlement and prior to entry the settler for any reason becomes disqualified, the privilege gained by settlement is lost. 30-8

284. In good faith on land covered by the entry of another will not deprive the settler of the benefit of the act of May 14, 1880, where no adverse claim exists. 8-448

285. One who is residing on land under the belief that his title thereto is complete under a warrant location is entitled to enter such tract on the cancellation of

said location, and such right will not be defeated by an intervening adverse entry made before the settler is aware of such cancellation. 27-402

286. Where the land is apparently embraced within a railroad grant, and is settled upon by one intending to purchase the same from the company, and it is subsequently found that said land was excepted from said grant, the right of such settler to make entry of the tract will not be defeated by the intervening application of another. 27-196

287. In order to successfully assert, as against an intervening railroad selection made under the act of March 2, 1899, a right or claim acquired by settlement upon unsurveyed land with a view to entry thereof under the homestead laws, the homestead applicant must show that he established an actual residence upon the land within a reasonable time after settlement and that such residence had been maintained to the date of the presentation of his homestead application. 31-196

288. Where a tract of unsurveyed land within the primary limits of a railroad grant was at date of definite location of the road in good faith occupied by a qualified homestead settler, and by conveyance and connected and continuous occupancy the right passed from one settler to another down to date of filing the township plat of survey, the rights of the settler are superior to claim of the company under its grant. 39-5

289. On the relinquishment of a railroad selection the right of a settler on the land to enter the same will not be defeated by an adverse claim of prior occupancy, set up on behalf of one who has cultivated and improved the land, but not established residence thereon. 27-382

290. A person resident on and intending to take as a homestead land covered by an uncanceled entry, upon cancellation has three months within which to file his claim. 2-117, 123

291. One will not be permitted, in the face of a contest for default against his timber-culture entry, to assert a homestead right initiated (by building and improving) while the tract was covered by said entry. 2-265

292. Pending determination on appeal of the right to make homestead entry an applicant is not required to make, where his claim rests on his application. 20-295

293. One who claims the right to make a homestead entry on account of priority of, must show that it was followed by the establishment and maintenance of residence. 21-97

294. On public land must be followed, within a reasonable time, by actual residence, in order to give the claimant any rights thereunder. 29-218

295. Priority of, as against an existing homestead entry is forfeited, where the settler subsequently, through the acquired ownership of other land becomes disqualified as a claimant under the homestead law. 27-70

296. Climatic reason for failure to make, not accepted in the absence of good faith. 4-393

297. Where two settled prior to survey on a forty, agreeing on a boundary, and both claimed duly, one as preemtor, the other as homesteader, they make joint entry. 2-585

298. Where there was an improvement by two settlers on the same 40-acre tract, with an agreed boundary line, and they each duly made homestead entry embracing it, a joint cash entry is allowed; but if either refuses to unite therein within 90 days from notice the entire tract is awarded to the other. 2-104, 150

299. Section 2274, R. S., is only applicable to settlements made under the agricultural laws, and does not, therefore, authorize a joint entry as between a homesteader and townsite settlers. 27-629

300. Where two settlers prior to survey agree as to the line separating their claims, and it is found that their improvements are on the same subdivision, their rights should be adjusted, in accordance with the agreed line, by allowing the entry of one for the tract, on condition that he make title to the other for such portion of said tract as would fall to him under the original agreement. 27-154

301. Where three persons embraced a 40-acre tract in their homestead entries the entry of one of them, who had no im-

provement on it prior to the filing of the plats, must be canceled. 2-105

302. Acts of, performed by one claiming the right to make a second homestead entry, prior to his application for the exercise of such privilege, are not invalid, if it is found that the settler is in fact entitled to make such entry. 24-584

303. Made by one who has at such time an existing homestead entry for another tract, must be held valid where the settler is entitled to make a second entry. 23-440

304. If one claiming the right to make a second homestead entry settles and applies for the restoration of his homestead right, and permission to enter the land so settled upon, and is adjudged to be entitled to make such entry, such judgment validates his acts of. 23-63

305. Where one was actually in possession of 160 acres at the passage of the acts of March 3, 1879, and May 14, 1880 (though prior thereto he could enter but 80 acres), he was entitled to enter it as a homestead. 2-141

306. Where there has been *bona fide* settlement and a preemption or homestead claim duly made after filing of the plats, a temporary absence of the settler prior to making claim does not forfeit the right. 2-337

307. Not made in good faith, but with a view to speculation, does not confer any rights. 11-330

308. Acts of, induced by knowledge of an impending contest can not be accepted as in *bona fide* compliance with the requirements of the homestead law. 17-176

309. Can not be made by one who is at the same time maintaining a settlement claim for another tract under the preemption law. 11-559

310. Not affected by the fact that it is made pending the issuance of final certificate on preemption proof previously submitted in due compliance with law. 11-182

311. Rights acquired by, are abandoned as to the land not included within the entry. 11-557

312. The homestead law does not define the character or value of the improvements required at the hands of the settler. 20-319

III. Osage Land.

313. If the settlement is not *bona fide*, but for the benefit of another, the settler is not an "actual settler" under the act of May 28, 1880. 8-173

314. An "actual settler" under the act of May 28, 1880, is one who goes upon the land intending to make it his home, and does some act thereon indicating such intention, and sufficient to give notice thereof to the public. 8-173; 10-36

315. An "actual settler" on Osage trust and diminished reserve is one who has made *bona fide* residence and improvement. 2-187; 5-303, 442, 537; 7-278; 9-98; 10-23

IV. Preemption.

316. Is the sole basis of the preemptive right, and such right is not greater nor less than the settlement. 2-637; 5-274

317. Of the preemptor defines the extent of the claim. 11-72

318. On public land does not cause a "preemption right" to attach in the absence of an intention to take the land under the preemption law. 20-280

319. Not constituted under preemption law by mere intention. 3-295

320. Extent of claim may be determined by the location of the improvements and the land included in the declaratory statement. 4-401; 6-249; 12-471

321. Under the preemption law there is a recognized distinction between settlement and residence. 8-503

322. To constitute a legal act of, there must be an entry upon the land with the intent to appropriate it and an act indicative of such intent, and the two must harmonize. 3-294

323. And filing confer an inchoate right under the preemption law which will be protected. 1-333; 9-41

324. Act of, may be valid without residence, but residence must follow within a reasonable period after settlement. 3-218, 553

325. Temporary residence for the sole purpose of cultivating the land and not for the establishment and maintenance of a permanent home, does not create a

valid settlement claim under the preemption law. 27-297

326. Date of, is a matter of proof without respect to allegation in declaratory statement. 1-444

327. The actual date of settlement may be shown to be earlier than alleged in the declaratory statement. 1-444;

3-102, 380; 11-143; 12-299; 14-431

328. Can not be post-dated in order to defeat the intervening claim of another. 12-519

329. On segregated land confers no right of preemption. 5-289; 11-477

330. Preemption claimant on land at cancellation of another's entry is a settler without the performance of any new act of settlement. 3-218, 553

331. And filing do not reserve land from timber-culture entry though notice of the preemptor's priority of right is given thereby. 9-262

332. Prior to inception of adverse claim good though made after filing. 3-373, 499; 4-424; 6-232; 8-504

333. Held good for preemption claim where the settler on the same day had abandoned and relinquished a former homestead entry. 3-102

334. Of a preemptor not defeated by an outstanding homestead entry previously made by him if he has in fact abandoned the land covered by said entry. 13-702

335. By a minor is invalid under the preemption law, but the defect is cured if in the absence of an adverse claim he attains his majority prior to making entry. 9-297

336. Change of, does not affect rights of settler until after filing declaratory statement. 9-139

337. Of one who has exhausted his preemptive right is invalid under the preemption law. 4-560; 5-16

338. The mere purchase of improvements does not constitute an act of, but when settlement follows such purchase the improvements are held as though made by the preemptor. 3-100

339. One who settles or resides on public land as the tenant of another who claims it can not thereby legally establish a claim to the land in his own right. 3-46

340. Speculative settlement may be proved by a contract made before entry to convey the land after entry. 2-781

341. Of a preemptor who fails to file in time is not protected as against the next settler who has complied with the law. 2-578; 3-455; 6-391; 10-485; 13-209

342. Though insufficient to support a filing, may be made good subsequently in the absence of intervening adverse claim. 6-232

343. Where the claimant abandoned the subdivision on which he had settled, and thereafter failed to connect himself with remainder of his claim until after an adverse right attached, he can not hold as a preemptor. 3-92

344. When two settle on the same tract the preferred right of purchase by the prior settler depends on his having conformed to the other provisions of law. 2-575

345. On land covered by the existing entry of another confers no right under the preemption law that is protected by the repealing act of March 3, 1891. 15-179

346. Within the corporate limits of a city can confer no preemptive right on the alleged settler, where no steps are taken to subject the land to the settlement laws under the act of March 3, 1877, prior to the repeal of the preemption law. 26-503

SETTLERS.

See RAILROAD LAND; WORDS AND PHRASES CONSTRUED, 82-86.

1. Act of August 29, 1890, for relief of, on railroad lands. Circular of November 1, 1890. 11-434

2. Act of October 1, 1890, for relief of, on Northern Pacific indemnity lands. Circular of November 7, 1890. 11-435

3. Circular of April 7, 1903, under act of March 3, 1903, granting relief to certain homestead settlers in Alabama. 32-89

4. Act of February 24, 1905, for relief of, on Mobile & Girard grant. Circular of March 24, 1905. 33-489

5. Act of April 17, 1906, for relief of, on St. Paul, Minneapolis & Manitoba lands. Circular of May 22, 1906. 34-630

SIOUX INDIAN LANDS.

See INDIAN LANDS.

SLATE.

See MINERAL LAND, 44-45; MINING CLAIM, 844; RAILROAD GRANT, 879; TIMBER AND STONE, 129.

SODA.

See MINERAL LAND, 30; MINING CLAIM, 203, 840.

SOLDIERS' HOMESTEAD.

See HOMESTEAD, IX, X.

SOUTH DAKOTA.

See SCHOOL LAND, 25-26, 56, 231, 288; STATES AND TERRITORIES, 142-143.

SPECIAL AGENT.

See LAND DEPARTMENT, VII; PRACTICE, X.

STARE DECISIS.

1. The doctrine of, recognized and followed in departmental action. 1-239

5-92; 10-396; 19-365

2. The doctrine of, is recognized and followed in the department in cases that involve principles well established by a uniform line of decisions. 17-79

3. The General Land Office, in the disposition of cases that fall within well-settled rulings of the department, must be governed by such rulings until they are reversed by departmental authority. 11-174

4. Precedent followed unless clearly contrary to law. 5-277, 713

5. Executive construction of a statute should not be changed except for cogent reasons. 8-255, 279; 13-17, 516

6. While the doctrine of, is recognized and followed by the department, it will not be held applicable to a decision that is violative of the law, and operates to take away a statutory right. 25-55

STATES AND TERRITORIES.

See DESERT LAND, III; PRIVATE CLAIM; SCHOOL LAND; SWAMP LAND.

1. A State selection made prior to the official filing of the township plat is premature and invalid. 24-272

2. The approval of a selection is a final adjudication of the right of the State to make the same and operates to pass title thereunder; and the State having accepted the title thus acquired will not be heard to question the validity thereof. 26-94

3. Where a land grant to a State or Territory does not convey the fee simple title to the lands granted, or require patents to be issued therefor, title does not pass until the approved list of selections of such lands has been certified to the State by the Commissioner of the General Land Office. 33-13

4. Regulations of April 25, 1907, and May 24, 1910, governing selections under grants for educational and other purposes. 35-537; 38-611; 39-39

5. Paragraph 9 of regulations of April 25, 1907, providing that notice of selections for educational and other purposes "must be given by publication once a week for five consecutive weeks in a newspaper of general circulation in the county where the lands are located," discussed and adhered to. 36-415

6. Circular of November 3, 1909, relating to selections, etc., covering unsurveyed lands. 38-287

7. When selections are made in mineral belts, or in proximity to lands claimed or returned as mineral, the State should be required to give notice of the selections, describing the lands selected. 18-477

8. Selections of land; instructions of July 9, 1894, with respect to the manner of proceeding to determine the mineral or agricultural character of. 19-23

9. Instructions relative to selections by, in mineral belts. 23-459; 24-321, 416

10. Under the circular of November 27, 1896, requiring publication of notice of selections in all cases where the lands are within a township containing any mineral entry, claim, or location, it is not incum-

bent upon the State to publish such notice until notified to do so by the local officers.

37-26

11. Instructions of October 16, 1909, requiring selection lists embracing coal lands to be submitted to Director of Geological Survey for report.

38-271

12. Selection of desert lands by; regulations of November 22, 1894.

20-440

13. Circular as to the preference right of North Dakota, South Dakota, Montana, Idaho, and Washington to select lands under their grants.

16-462

14. Instructions of May 27, 1891, for making selections in Montana, North Dakota, South Dakota, and Washington.

24-548

15. Circular of June 17, 1897, modifying instructions of May 27, 1891, with respect to selections by.

24-553

16. Instructions of November 10, 1900, relative to certificate to be filed by State with lists of selections, to prevent putting in reservation on account of a grant a quantity of land in excess of the total amount granted.

30-344

17. Directions given that in all nonmineral entries of lands in Mississippi, Louisiana, Arkansas, and Florida the same nonmineral affidavit be required, before the entry is permitted to go of record, as is required in other States to which the mining laws are applicable.

31-135

18. A hearing will not be ordered on an allegation that a tract of land, embraced within a certified list of State selections, was not, on account of its prior known mineral character, intended to be granted to the State, except upon a strong *prima facie* showing in support of such allegation.

24-486

19. A State in making selection of lands at the time they are opened to entry may file its list through a personal representative; and although the required affidavits accompanying the same may have been executed prior to the time fixed for the opening, if they were executed within a reasonable time prior to the filing of the application, the facts therein recited should, in the absence of any showing to the contrary, be accepted as true at the date the list is presented.

36-315

20. In the case of a nonnavigable stream fixed as the boundary of a State, the middle of such stream, as reckoned from its natural standing banks, is the actual boundary line.

22-47

21. Natural boundaries should control in the settlement of the boundary lines between the Choctaw, Cherokee, and Creek Nations; hence the boundary line of the Cherokee Nation should stop where it first meets the Canadian River in its southern course from the 4-mile post referred to in the treaty of May 23, 1836, and from this point the river will mark the boundary between the Creek and Choctaw Nations.

26-440

22. In the treaties affecting the boundaries of the lands secured to the Five Nations, wherein a river is established as a boundary, it was intended thereby to extend the title and proprietorship of riparian claimants to the middle thread of the stream.

26-516

23. The boundary between the Indian Territory and the State of Texas is the line of the middle of the main channel of Red River as it existed when Texas was annexed to the United States, and subsequent sudden changes in the current or main channel of said river will not in any way affect the location or position of said boundary line as it lay upon the earth's surface when established.

24-372

24. The control and right to dispose of public lands lying under a navigable stream, that forms the boundary of a State, and within the limits thereof, passes from the Government to the State on its admission to the Union, and if a sudden change occurs thereafter in the course of such stream the reliction lying within said State is not the property of the United States.

28-124

25. The special appropriation made in the general deficiency act of March 2, 1889, for the benefit of certain States on account of their claims on the 5 per cent fund is not to be taken as authorizing the payment to such States of said per cent on sales of Indian lands for any period of time except the one specified in said act.

22-551

26. Under the provisions of the act of August 3, 1854, the certification of

lands under the agricultural-college grant, that in fact passed under the swamp grant, is of no operative effect. 23-460

27. A lieu selection of school lands by a State or Territory operates as a waiver of all claim to the lands assigned as bases, and after the approval of such selection by the Secretary of the Interior it is not material to inquire how it was made in the first instance. 30-83

28. Under the provision in the act of June 6, 1900, that in case any section 13 or 23, reserved by said act to the Territory and future State of Oklahoma for university and other purposes, was "lost to said Territory by reason of allotment under this act or otherwise," other lands equal to the loss might be located, said Territory is authorized to select lands in lieu of any such section 13 or 33 lost to said reservation by reason of its inclusion within a pasture reserve set aside by the Secretary of the Interior pursuant to article 3 of a treaty between the United States and the Comanche, Kiowa, and Apache Indians concluded October 6, 1892. 31-362

Alabama.

See HOMESTEAD, 5, 958 961; MINERAL LAND, II; SCHOOL LAND, II, b.

29. Vested rights under mining laws not affected by the act of March 3, 1893. 4-476

30. The State's selection of university lands should be admitted subject to the legal claim of settlers. 3-315

31. The presentation of a State selection has the force of an application to enter. 3-317

32. No substantial settlement claim or improvement should be prejudiced by the act of April 23, 1884, granting lands to the State for university purposes. 3-317

Arizona.

See PRIVATE CLAIM, V; SCHOOL LAND, 69.

33. The right of the State to make selection in satisfaction of the grant for university purposes made by the act of February 18, 1881, is limited to lands which have been identified by survey, and

the State acquired no such right by an attempted selection of lands prior to survey as would prevent the subsequent reservation thereof by the Government. 37-88

Arkansas.

See ARKANSAS SUNK LANDS; MINERAL LAND, 6; SWAMP LAND, 189-190.

34. Where title has passed to the State under a railroad grant no action should be taken looking toward the issuance of patent to the State for the same land under the swamp grant. 10-165

California.

See PRIVATE CLAIM, VI; SCHOOL LAND, II, c, 35, 37, 95, 121; SWAMP LAND, VII.

35. The States of California and Nevada allowed to take double minimum land in satisfaction of the agricultural college grant. 5-548

36. The department has no authority to review transactions between the State and its purchasers or agents. 6-403

37. A duly appointed commissioner of deeds for the State of California is an officer of that State, and deeds executed outside of the State before such commissioner are not, in contemplation of law, extraterritorially executed, but have the same force and effect as if executed within said State before any officer authorized by law to take acknowledgments. 32-112

38. The rejection of a State selection prior to the passage of the act of July 23, 1866, will not remove said selection from the operation thereof where notice of such action was not given the State. 7-397

39. A location made under a warrant issued by the State in part satisfaction of the internal improvement grant is within the confirmatory provisions of the first section of the act of July 23, 1866. 7-543

40. The act of July 23, 1866, confirmed to the State irregular selections where the land covered thereby had been sold to purchasers in good faith under the State law. 7-397

41. Patent issued to a purchaser from the State under section 1, act of July 23,

1866, prevents a claim for the same tract under the swamp grant. 2-643

42. The purposes of the first section of the act of July 1, 1864, and the sixth section of the act of 1866, should not be confounded, as one relates to vesting title to private claims and the other to settling the right of lieu selections in the State. 3-424

43. Section 7 of the act of July 23, 1866, was not repealed by the revision. 1-417

44. The right of purchase under the act of July 23, 1866, section 7, is assignable, and in the absence of an adverse claim should be accorded to a purchaser in good faith after the final survey of the grant. 7-210

45. The right of purchase under section 7, act of July 23, 1866, is assignable, and in the absence of an adverse claim extends to one who purchases and enters into possession after final survey excluding the land from the grant. 9-241

46. The use of uninclosed land for the pasturing of stock, and the exclusion of others therefrom by means of a keeper or herder, constitutes possession thereof, within the meaning of section 7, act of July 23, 1866. 31-446

47. The word "improved" as used in said section contemplates the utilization of the lands applied for under said section for some recognized purpose of settled and civilized life, not necessarily by the erection thereon of buildings like houses and barns, especially where such structures are located on adjacent land and are adapted to use on the land applied for. Lands so used and occupied are within the intentment of the statute. 31-446

48. The right of purchase under said section is not defeated by adverse settlement claims, acquired after the passage of said act, with full knowledge and notice of the right asserted by the grant claimant to the lands upon which settlement was so made. 31-446

49. Under the provisions of section 7 of the act of July 23, 1866, persons who in good faith and for a valuable consideration purchased lands from those who claimed and were thought to be Mexican grantees or assigns, are entitled, provided they fulfill the other conditions of the act,

to purchase such of said lands found not to be included in the grant as finally surveyed, regardless of what other lands, not within the lines of their original purchase, were finally found to be the lands granted. 34-67

50. Right of purchase conferred by section 7, act of July 23, 1866, is alienable and descends to heirs upon the death of the purchaser. 9-145

51. The satisfaction by selection and patent of a Mexican grant of quantity within larger outboundaries does not preclude the purchase under section 7, act of July 23, 1866, of lands excluded from said grant on final survey. 9-241

52. The conditions under which the right of purchase is accorded by section 7, act of July 23, 1866, specified. 8-144

53. Application for the right of purchase under section 7, act of July 23, 1866, must show (1) that in good faith he purchased land for a valuable consideration of Mexican grantees or assigns which was excluded from the final survey, and (2) has used, improved, and continued in the possession of said land according to the lines of original purchase. 9-445

54. The conveyance of an undivided interest does not carry the right of purchase under the act of 1866. 7-144, 279

55. Right of purchase under section 7, act of July 23, 1866, is only conferred upon one who purchased from Mexican grantees a definite tract of land. (See 10-242.) 8-144, 279

56. The right of purchase under section 7 does not relate back to former claimants, but extends to those then holding lands purchased in good faith before the rejection of the grant, and who had from date of purchase to the passage of the act continued in actual possession thereof within definite boundaries. 8-144

57. Whether where parties purchase a specific portion of a rejected grant and hold the same as cotenants, it is competent to enter the same under section 7, act of July 23, 1866, in the absence of any valid adverse claim: *Quare*. 3-401

58. Right of purchase under section 7, act of July 23, 1866, not defeated by the fact that a deed under which a claimant holds an undivided interest in a Mexican

grant does not describe the lands by metes and bounds, if the claimant thereunder enters into possession of a tract marked by specific boundaries and continues to use and occupy the same according to the lines of the original purchase. 10-242

59. Under a parol partition of a Mexican grant in which the parties thereto hold undisturbed possession according to the lines of such partition and sell the lands thus received, the grantee acquires the right of purchase under section 7, act of July 23, 1866, so far as the question of boundaries is concerned, though in the instrument of transfer the lands are described as an undivided interest. 12-667

60. The phrase "according to the lines of their original purchase," as used in the act of 1866, construed. 10-248

61. A "purchaser in good faith" under section 7, act of July 23, 1866, defined. 8-144

62. The right of purchase under section 7, act of July 23, 1866, dependent upon the character of title held by the grantee at date of said act. 12-667

63. The right of purchase under section 7, act of July 23, 1866, is not defeated by the fact that the legal title to the land is, at the date of the act, held by one not a purchaser for a valuable consideration where the owner of the equitable title at such time is not thus disqualified. 14-536

64. The right of purchase under section 7, act of July 23, 1866, extends only to a purchaser who buys relying in good faith upon the boundaries of the private claim as generally accepted, and which afterwards are found to be incorrect, and affords no protection to one who buys with good reason to believe that the land is not included in the grant. 13-448

65. The right of purchase under section 7, act of July 23, 1866, does not extend to one who purchases the title to a confirmed, but unsurveyed, Mexican private claim having definite boundaries, and who receives patent for the full quantity of land included within such boundaries as established on survey. (See 30-345.) 29-369

66. Where in the decree of confirmation the description of a Mexican private claim is such that mistake as to boundaries is not inconsistent with good faith, a pur-

chaser of the claim, as confirmed, who receives patent for the lands within the boundaries as established by survey, has the right, under section 7, act of July 23, 1866, to purchase the lands occupied by him as a part of said claim, to which no valid adverse rights had attached, but were by the survey excluded from said claim, though theretofore regarded as a part thereof, and were by the purchaser believed to be within the lines of his original purchase. 30-345

67. The purchaser of a private claim of quantity within larger outboundaries who controls the location of the claim is not entitled to purchase lands excluded on final survey. 16-665

68. A settlement on land not subject thereto is not such an adverse claim as will defeat the right of purchase under section 7 of said act. 9-241

69. The right of purchase excludes the land covered thereby from the general operation of the preemption law. 9-445

70. The question of the applicant's laches can not be raised by one claiming an adverse right under the preemption law. 9-446

71. In the absence of general regulations or statutory authority the Department should not fix a time within which the right of purchase under section 7 shall be exercised in a particular case. 9-446

72. Joint entry under section 7, act of July 23, 1866, is measured by the joint occupancy of the parties. 6-434

73. *Prima facie* valid selections of record under section 8, act of September 4, 1841, prior to survey by the Government and renewed when the plat of survey is filed, operate as a bar to any other disposition of the land and may be certified to the State if found valid. 10-217

74. Valid selections under section 8, act of September 4, 1841, do not depend upon the act of July 23, 1866, for confirmation. 10-200

75. Lands within the limits of a railroad grant, and withdrawn for the purposes thereof, are not subject to selection under the grant made to the new States by section 8, act of September 4, 1841, and no rights are acquired by an application to select, made when the lands are not subject thereto. 17-417

76. The location of lands granted by the act of September 4, 1841, was restricted to lands not "reserved," and it therefore follows that land within a withdrawal for a railroad grant is not subject to such location; nor would the relinquishment of the company remove the reservation so as to render such land subject to location as public land. 19-277

77. An application for survey filed by the State under the act of March 3, 1871, in which the land is described by township and range, is not materially defective, because the county is wrongly named therein (university lands). 13-570

78. An application of the State for a survey initiates a right to the land embraced therein that is protected against subsequent settlers (university lands). 13-570

79. The authority of one acting for the State under the act of March 3, 1871, sufficiently appears where his acts are recognized by the Department and ratified by the State. 13-570

80. One applying to purchase school lands from the State is put upon inquiry as to the State's title by the possession and cultivation of another. 9-106

81. A mere applicant for the right of purchase from the State is not entitled to purchase under section 2, act of March 1, 1877, as a "purchaser for a valuable consideration." 9-106

82. The holder of a certificate of purchase from the State, not yet entitled to a patent, can not claim the protection extended to the "purchaser for valuable consideration." 9-106

83. An innocent purchaser from the State is protected under section 2, act of March 1, 1877, whether the purchase was made before or after the passage of the act. 9-106

84. Official notice to the State of the invalidity and cancellation of a school selection is such notice to one applying to purchase thereunder from the State as to preclude him from pleading the status of an innocent purchaser. 9-106

85. In the absence of express provision in section 2488, R. S., giving to the surveyor general final authority over surveys in California, the power of supervision and direction lodged in the Com-

missioner of the General Land Office and the Secretary of the Interior by sections 441, 453, and 2478, R. S., necessarily extends to surveys of public lands in that State in like manner as to other public land transactions. The Secretary is not bound to accept and recognize for any purpose a survey of the public lands in California or elsewhere where there is mistake or fraud in its execution or approval, even though the returns or notes accompanying it show a portion of the land embraced therein to be swamp and overflowed. 31-303

Colorado.

See PRIVATE CLAIM, VII; SCHOOL LAND, II. d. 18-19, 46, 93.

86. Instructions of August 2, 1910, under act of June 25, 1910, making a grant of lands to Colorado for benefit of agricultural college. 39-140

87. The provisions in the act of March 3, 1875, requiring the State to make its selection of salt springs within two years after the admission of the State is directory only, and a failure to select within said period does not work a forfeiture of the grant. 10-222

88. The act of March 3, 1875, is not repealed by that of January 12, 1877, nor does the proviso in the later act amount to a legislative declaration that the right to select salt springs conferred by the act of 1875 expires at the end of two years after the admission of the State. 10-222

Dakotas.

89. Under section 13, act of February 22, 1889, each of the Dakotas is entitled to 72 sections of land for university purposes, and the lands selected by the Territory of Dakota lying wholly within South Dakota inure to said State. 12-89
(See also SOUTH DAKOTA.)

Florida.

See MINERAL LAND, 6, 40; PRIVATE CLAIM, VIII; RESERVATION, 151-155, 210; SCHOOL LAND, 227, 251; SWAMP LAND, 28, 241, 251-253.

90. By the act of June 9, 1880, the right of the State (Florida) to select indemnity

is confined to "vacant unappropriated public lands." 8-380

91. Instructions of April 4, 1899, under relief act of February 25, 1899. 28-273

Idaho.

See SCHOOL LAND, 88-89.

92. Land selected for university purposes is not open to entry. 9-232

93. The department has full control of university selections until approved by the President, and may protect a subsequent entry improperly allowed for land thus selected by allowing another selection in lieu of the entered tract. 9-232

94. The fact that land sought to be selected by the State for university purposes was returned and classified as mineral is no bar to such selection, if there is not within the limits of such tract any known valuable mineral deposit; and any question as to the tract lying within 6 miles of a known mining claim is wholly between the State and the United States. 32-107

95. Section 4, act of July 3, 1890, requiring selections to be made "in legal subdivisions of not less than one-quarter section," contemplates selections in as nearly a compact body as possible, limiting the minimum amount that may be taken in any one place to a quarter section. 20-170

96. The department will not reserve unsurveyed lands from settlement in order that the State may select lands therein after survey in satisfaction of the grant made by the act of admission. 16-458

97. The preference right, for a period of 60 days from the filing of the township plat, accorded the State by the act of March 3, 1893, within which to make selection of lands, does not segregate the lands against other applications, but they should be received, subject to the State's right, and, if that be not exercised, take effect, if otherwise entitled to approval, as of the date of their presentation. 34-301

98. The provision in the act of March 3, 1893, according to the State a preference right for 60 days from the filing of the township plat within which to select lands subject to entry by the State under the act of July 3, 1890, is not effective as

against the United States and will not prevent the Government including the lands in a national forest. 39-343

99. The preference right accorded to certain States by the act of March 3, 1893, within which to select lands under grants made by the act of February 22, 1889, applies to the State of Idaho as much as to the other States named in said act of 1893, notwithstanding said State was not included among those to which grants were made by the act of 1889. 32-107

100. Failure on the part of the State to publish notice of an application for the survey of lands within 30 days from the date of such application, as provided by the act of August 18, 1894, does not affect its preference right to select such lands conferred by the act of March 3, 1893. 32-107

101. A selection for university purposes by the State within the 60-day preference right period accorded by the act of August 18, 1894, in excess of the unsatisfied portion of its grant for such purpose, may be for that reason rejected in its entirety; and the State is not entitled to transfer the excess to the satisfaction of other grants to the prejudice of the rights of settlers. 39-583

102. A pending application of the State to select an isolated tract (island) after survey under the preferred right accorded by the act of March 3, 1893, should be respected if the land is subject to such selection. 16-496

103. The preferred right of selection conferred upon the State by the act of March 3, 1893, is not operative as against *bona fide* settlement rights existing at the time the plat of survey is filed in the local office. 23-147

104. The act of July 1, 1898, conferred upon residents of Idaho the same right to cut and remove timber from lands within the limits prescribed by said act in Wyoming, whether reserved or unreserved, as was enjoyed by the residents of Wyoming under the acts of March 3, 1891, and June 4, 1897. 31-412

Illinois.

See SWAMP LAND, 86-88.

Iowa.

See SURVEY, 132; SWAMP LAND, 13, 65, 126.

Kansas.

105. Under act admitting to the Union, is entitled to 5 per cent of the proceeds of cash sales of public lands; is not entitled to a percentage of the fees received in homestead and preemption filings, etc., which are no part of the price of the land, but are designed to defray the expenses of the local officers. 2-695

106. The act of 1857 allowing 5 per cent to the States on sales of former Indian lands only applicable to the States then in the Union. 5-712

107. The declaration common to the act admitting the States that "all laws not locally inapplicable shall have the same force and effect within that State as in the other States of the Union" does not enlarge a specific grant. 5-712

108. The payment of the 5 per cent to Kansas was limited to sales of *public* lands, and can not be allowed on sale of Indian trust lands. 5-712

Louisiana.

See MINERAL LAND, 6; PRIVATE CLAIM, IX; SCHOOL LAND, 83, 278-281; SWAMP LAND, 3-11, 19, 48, 53, 68-70, 80-83, 116, 183-187, 296.

109. Warrants issued by the State in satisfaction of the internal-improvement grant afford no basis for the selection of lands in lieu of deficiencies under said grant arising from the erroneous certification thereunder of lands not subject thereto. 15-314

110. For the purpose of determining whether certain islands lying between the two channels of the Sabine River at a point known as the "Narrows" are part of the public domain and of the character of lands that pass to the State of Louisiana under its swamp land grant, the west bank of the western channel of the river at this point will be recognized as the boundary between the States of Louisiana and Texas. 39-53

Michigan.

See SCHOOL LAND, 70; SWAMP LAND, 17, 78, 231-234.

Minnesota.

See SWAMP LAND, 20-24, 195, 201-231, 246, 295.

111. Instructions of February 29, 1912, relating to drainage of swamp and overflowed lands in Minnesota under act of May 20, 1908. 40-438

112. Selection under the act of March 3, 1879, must be for unoccupied land. 3-456

113. An application in 1889 for the reinstatement of university selections canceled in 1882 on the governor's relinquishment comes too late for favorable action where most of the lands have in the meantime been sold by the Government. 12-135

114. The act of March 3, 1879, providing that, "There be, and hereby are, granted to the State of Minnesota, to be selected by the governor of the State, 24 sections of land out of any public lands of the United States not otherwise appropriated," with the proviso that the lands so granted shall be selected within three years, is a present grant, and the requirement as to selection, contained in the proviso, should be construed as directory and not mandatory; hence a failure of the State to make such selections within the time specified will not defeat its right under said grant. 25-432

Mississippi.

See MINERAL LAND, 6; SCHOOL LAND, 81; SWAMP LAND, 137.

115. The right under the act of June 20, 1894, to select lands for university purposes, from those restored by the act of March 2, 1895, is limited to lands restored by said act free from any provision requiring their disposal in a special manner. The right of selection therefore does not extend to the lands restored by said act that were by the terms thereof set apart for entry under the towns-site laws. 20-510

Missouri.

See PRIVATE CLAIM, X; SCHOOL LAND, 97, 137; SWAMP LAND, 91.

116. The act of June 20, 1894, authorizing the selection of lands for university purposes, restricts such selection to unoccupied and uninhabited lands, and also provides for the issuance of patent for the lands so selected; and it must therefore be held that until patent issues on said selections, the department retains jurisdiction to inquire into the status of the lands at date of selection with respect to alleged adverse settlement rights. 25-106

117. The act of June 20, 1894, authorizing the governor to select, for university purposes, out of the unoccupied and uninhabited lands of the United States in said State, a specified amount of land, was not a grant *in presenti*, but title to the lands designated only vested in and accrued to the State upon selection and certification, legally exercised as authorized in the act, and subsequently approved. 30-149

118. An occupant of a tract of land, within the meaning of the act of June 20, 1894, is one who has the use and possession thereof, whether he resides upon it or not. 30-149

119. In making selection under the act of June 20, 1894, it devolved upon the State to show affirmatively that the lands selected were of the character designated in the act, but such showing having been made, and the selection approved, it was thereafter incumbent upon the party attacking the validity of the approved selection to assume the burden of proof. 30-149

Montana.

See SCHOOL LAND, 20, 53-55, 310.

120. The department controls selections under the university grant until they are approved, and may authorize the change of a selection which embraced a *bona fide* settlement claim made without notice of the selections. 8-55

121. An application for the survey of lands with the view to their selection under act of February 22, 1889, does not withdraw such lands from settlement; nor

is there any authority to withhold such lands from settlement until the State has opportunity to select. 13-711

122. A reservation of unsurveyed lands upon the application of a State to have them surveyed under the acts of August 18, 1894, and February 22, 1889, will be revoked where it appears that prior to such application by the State a railroad company had made application for their survey under the provisions of the act of February 27, 1899, had made the deposit required by said act, and steps had been taken by the Land Department to execute such survey. 30-278

123. Failure on the part of a State to publish notice of an application for the survey of lands within 30 days from the date of such application, as provided by the act of August 18, 1894, does not affect its preference right to select such lands, for the period of 60 days from the filing of the township plat of survey, conferred by the act of March 3, 1893. 34-139

124. The provision in the act of March 3, 1893, according to certain States a preference right, over all persons or corporations, except prior settlers, for a period of 60 days from the filing of the township plat of survey, within which to select lands under grants made by the act of February 22, 1889, was not repealed by the provisions of the act of August 18, 1894, according a similar right of selection for a period to extend from the date of application by the State for the survey of the lands until the expiration of 60 days from the date of the filing of the township plat, provided notice of the application for survey be published within 30 days from the date of the filing of such application. 34-139

125. University selections approved prior to the admission of the State require no further action to complete title except the admission of the State; the certification to the governor of the Territory is sufficient evidence of title. 14-142

126. The certification of lands selected under the act of February 22, 1889, is the equivalent of a patent thereto, operating to terminate the jurisdiction of the Land Department over the lands thus certified; and after such certification there is no au-

thority in the department to accept a reconveyance of said lands, with a view to allowing the State to make other selections in lieu thereof. 27-474

127. As to unapproved selections under the act of February 22, 1889, the department may, on good cause shown, permit the State, through its duly authorized officers, to relinquish its claim, with a view to making other selections in lieu thereof, such relinquishment to be accompanied by due showing that none of the land so relinquished has been disposed of or encumbered by the State. 27-474

Nebraska.

See SCHOOL LAND, 98-99, 162.

128. Directions given for the survey of boundary line between South Dakota and Nebraska. 15-594

129. Circular of May 31, 1904, under act of April 28, 1904, amending the homestead laws as to certain lands in Nebraska. 32-670

130. Instructions of February 1, 1905, restoring to entry certain lands in Nebraska withdrawn under section 1, act of April 28, 1904. 33-386

131. Instructions of April 15, 1909, under act of March 3, 1909, respecting sale of certain public lands in Nebraska. 37-580

Nevada.

See SCHOOL LAND, 24.

132. The settlement right of a homesteader defeats selection under the grant of June 16, 1880, and the failure of the settler to assert his claim within the statutory period will not operate to the advantage of the State. 15-99

New Mexico.

See DONATION, I; PRIVATE CLAIM, XI; SCHOOL LAND, 87, 246-247.

133. Rules and regulations for making selections in, under the act of June 21, 1898. 27-281, 302

134. The grant to the Territory for the benefit of its university by section 3, act

of June 21, 1898, of "all saline lands in said Territory," includes only such lands as contain common salt (sodium chloride) in its various forms of existence or deposit and in commercially valuable quantities. 35-1

135. Under a stipulation in a lease by the Territory that the board of public lands of said Territory shall have the power to at any time try and determine the question whether the lease was procured through false and fraudulent representations, said board has authority, without the intervention of a court, to terminate the lease upon a satisfactory showing that it was so procured. 31-341

136. In the absence of further legislation, the officers named in section 8, act of June 21, 1898, making certain grants to the Territory, will continue a commission for the selection of "all grants of land made in quantity or as indemnity" by said act, until its prescribed duty has been fully performed; but the appropriation made by section 11 of said act, "for the purpose of paying the expense of the selection and segregation" of the lands granted, including compensation to the commission, having been exhausted, the department is precluded from making any further disbursement for compensation to or expenses incurred by the commission. 31-261

137. Circular of August 1, 1898, with respect to the disbursement of the appropriation made by section 11 of said act, annulled and discontinued, and the rules and regulations of July 20, 1898, governing the selections of land in the Territory under said act of June 21, 1898, continued in force and effect. 31-261

138. All leases or "permits for right of pasturage" issued by the board of public lands of the Territory under acts of the legislative assembly of that Territory, and covering any of the lands granted by the act of June 21, 1898, should be limited, in accordance with section 10 of that act, to not exceeding 640 acres of land to any person, corporation, or association of persons, and all such leases or permits must be submitted to the Secretary for approval. 31-113

Ohio.

See SWAMP LAND, 35, 176.

139. The act of May 27, 1880, affects no land sold by the Ohio Agricultural College under the act of 1871. 1-3

140. Legislation with respect to the Virginia military district in Ohio. 1-5

Oklahoma.

See INDIAN LANDS; OKLAHOMA LANDS; SCHOOL LAND, 9, 27-28, 108, 116, 254-256, 275, 302; TOWN LOT, II; TOWN-SITE, II.

Oregon.

See DONATION, II; SWAMP LAND, 25, 33, 45-47, 66, 71, 129, 145, 245, 289-290.

141. The provisions in the act of February 14, 1859, granting salt springs and adjacent lands to the State, and the act of December 17, 1860, amendatory thereof, so far as they fix a time for selections under said grant, are directory and not mandatory; but as the grant so made only becomes effective as to specific tracts on selection by the State, the right to make such selections after the expiration of the time fixed therefor will be defeated by an intervening adverse right asserted under the general provisions made for the disposal of saline lands by the act of January 12, 1877. 24-116

South Dakota.

See SCHOOL LAND, 25-26, 56, 231, 288.

142. The payment of 5 per cent of the net proceeds of the sales of lands formerly included in Indian reservations, authorized by section 2, act of March 3, 1857, is limited to the States in the Union at the date of said act. 22-550

143. Section 13, act of February 22, 1889, providing for the payment to the State of 5 per cent of the proceeds of the sales of public lands, contemplated a disposition of such lands for the benefit of the Government, out of the proceeds of which said per cent might be paid; and it therefore follows that the State is not entitled to said per cent on lands disposed of under the general provisions of section 21, act of March 2, 1889, as said disposals are for the sole purpose of creating a trust fund for the benefit of the Indians, in

which the Government has no interest save that of trustee; but the State is entitled to said per cent on homestead entries of said lands commuted under the amendatory act of March 3, 1891, as in such cases the entryman is required to pay the Government price of the land in addition to the payments made for the benefit of the Indians. 22-551

Utah.

See SCHOOL LAND, 22-23, 47, 73-79.

144. State not entitled to select under section 8, act of July 16, 1894, lands valuable for their deposits of guano. 27-95

145. Coal and mineral lands are not subject to selection under section 7, act of July 16, 1894; but lands containing building stone may be taken thereunder. 29-69

146. The grant to the State of 100,000 acres for the establishment and maintenance of an institution for the blind, made by sections 12 and 13 of the act of July 16, 1894, is one of quantity to be selected by the State, under the direction of the Secretary of the Interior, "from the unappropriated public lands" within the State. The status of the lands at the date of their selection by the State is the criterion in determining the rights of the State under its selection. 30-301

147. The fact that lands selected by the State of Utah under section 8 of the act of July 16, 1894, were adjudicated by the Commissioner of the General Land Office to be noncoal lands, as the result of a hearing upon a report by a special agent charging that such lands contained coal, does not entitle the State to an unrestricted patent therefor where the lands were subsequently withdrawn and classified as coal; but the State is entitled to perfect the selection and take title to the land only with reservation to the United States of the coal therein, as provided by the act of June 22, 1910. 40-340

148. The acts of July 5, 1884, and August 23, 1894, relative to the disposition of lands in abandoned military reservations, provide a mode for the disposal of such lands exclusive of all others, and lands thus set apart for disposition in a designated manner are not subject to se-

lection as "unappropriated" public lands under the grant of July 16, 1894. 30-301

149. Where, after application by the State for the survey of lands under the act of August 18, 1894, but prior to the filing of the plat of survey, a temporary withdrawal embracing the land was made with a view to the establishment of a forest reserve, and the State was thereafter, within due time after the filing of the plat of survey, permitted to make selections of the lands, subject to final determination of the boundaries of the proposed reserve, such selection, being still of record on May 29, 1903, the date of the proclamation creating the Logan Forest Reserve, embracing the land in question, is a "lawful filing" within the meaning of that term as used in the excepting clause of the proclamation, and the approval of the selection and certification of the lands to the State subsequent to the creation of the reserve was proper. 33-283

Washington.

See SCHOOL LAND, 10, 49, 100, 169, 184, 226, 236-244, 272-273, 297.

150. On the admission of a State to the Union it acquires absolute title to all the tide lands within its borders to the exclusion of any rights under pending unadjusted scrip locations for such lands. 10-365; 13-299; 20-530

151. Selections under section 12, act of February 22, 1889, for public-building purposes, must be made in legal subdivisions of not less than one-quarter section. 17-575

152. In selections for the benefit of scientific schools, can not take advantage of a homestead settler's failure to make entry within the statutory period after the land is open to such appropriation. 21-453

153. An application on the part of a State to select lands should be rejected if the lands applied for are not open to such appropriation at the date of selection or at the time when the application is received. 22-385

154. A State will not be permitted to contest an entry, with a view to selection of the land involved under a grant to the State, where it appears that approved and

pending unapproved selections on account of said grant equal or exceed the full amount granted. 30-339

155. Lands formerly within the Columbia Indian Reservation and restored to the public domain by the act of July 4, 1884, are subject to selection under the provisions of the enabling act authorizing selections in satisfaction of the grants to the State from any "surveyed, unreserved, and unappropriated lands of the United States." 37-387

Wisconsin.

See SCHOOL LAND, 71; SWAMP LAND, 14-15.

Wyoming.

See SCHOOL LAND, 7-8, 94, 245, 269.

156. The certification of lands granted to the State by the act of July 10, 1890, conveys the fee simple of the lands so certified; and the department is thereafter without jurisdiction over said lands. 18-473

157. Where lands not subject to selection under the grant of July 10, 1890, on account of their mineral character, have been erroneously certified, the State may relinquish the same and be permitted to select other lands in place thereof. 18-473

STATION GROUNDS.

See RIGHT OF WAY, III.

STATUTES.

See ACTS OF CONGRESS AND REVISED STATUTES CITED AND CONSTRUED, PART 2.

1. Are operative from their date and are constructive notice to all. 2-30

2. The Revised, of the United States must be treated as the legislative declaration of the statute law on the first day of December, 1873. 15-388

3. Is operative from its date if no time is fixed when it shall become effective. 14-596

4. An act of Congress takes effect as a law from the time of its approval by the President, and the portion of the day that

expires before such approval is excluded from the operation of the act. 15-142

5. In construing Revised, reference may be had to the original where language is doubtful. 6-314

6. Recurrence to the history of the times at the date of the act proper in the construction of. 10-329

7. Courts will take judicial notice of the condition of the country and titles to land at the time of the passage of an act. 1-280

8. The title of an act may not override its text, but may give an insight into its purpose and scope. 2-825; 5-61

9. Debates in Congress considered in construing. 6-402

10. Action of Congress prior to passage of, considered. 6-730

11. Statutes are to be construed and applied according to their intent, and that is to be determined, if possible, from the language employed. 1-187; 2-605

12. Must be interpreted according to the intent and meaning, and not always according to the letter. 5-543

13. The natural and persuasive presumption of intent may be overthrown only by words of clear and unmistakable import. 2-349

14. A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. 2-444

15. To be so construed as to give its designed effect. 1-10

16. If possible, sense and meaning should be given to every part. 1-70

17. Where the construction of the language of a statute is doubtful, courts will prefer that which will confirm rather than destroy any *bona fide* transaction or title. 2-70

18. General terms should not be so construed as to lead to injustice. 19-144

19. Will not be given retrospective operation unless compelled by language so clear as to leave no doubt. 9-396

20. Consequences are to be considered in expounding laws where the intent is doubtful, but the principle is to be applied with caution. 2-858

21. A special right conferred by a special act will not be taken away by gen-

eral legislation without express words requiring it. 6-502

22. Words or phrases repugnant to other words or phrases that clearly express the intent and meaning of the statute should be rejected as surplusage. 5-543

23. Construction of, impliedly sanctioned by subsequent legislation. 1-2; 10-513

24. Where a complete system has been adopted for the disposal of lands of a particular character, it will not be presumed that Congress intended by subsequent legislation to supersede such system and to dispose of those lands in a different manner, unless such purpose is clearly expressed or indicated, or unless the two statutes are irreconcilable. 35-411

25. Congress presumed to be familiar with the subject matter of its legislation. 1-10, 15, 278

26. Executive acts are presumably constitutional, and will be so regarded by the department until declared unconstitutional by a court of competent jurisdiction. 22-196

27. Questions relative to the constitutionality of, can not be considered by the department in the administration of the law. 1-335; 19-496

28. The Land Department is without authority to pass upon the constitutionality of a statute, that question being within the province of the courts; and in the absence of a final decision by the courts holding unconstitutional an act dealing with public lands, the Land Department must proceed with the administration thereof. 39-449

29. If any authority exists in the executive branch of the Government to declare a statute unconstitutional, it should not be exercised except where the violation of fundamental law is so manifest as to overcome every presumption in its favor. 6-13

30. Where a provision in an appropriation act of general application is not expressly restricted to the appropriation it will be regarded as a permanent enactment. 2-464

31. Acts *in pari materia*, though passed at different times and not referring to each other, should be taken and construed together. 5-574; 6-8, 502; 8-368

32. If the words would fairly admit of different meanings, it would be right to adopt that which is more favorable to the interests of the public; applied (by the court) to a land grant act where the grantees may be supposed to have drawn the act. 2-858
33. Granting acts should be construed more strongly against the grantee. 1-331, 365; 3-243; 4-216, 429; 5-381
34. Of a remedial act is to arise from a consideration of the old law, the mischief, and the remedy. 2-582
35. Of remedial character to be construed liberally. 1-335, 532; 5-622; 12-674
36. Of remedial character to be so construed as to suppress the mischief and advance the remedy. 18-183, 283, 460
37. Distinction between mandatory and directory. 5-113; 10-224
38. Provisions of, directory when not of the substance of the things provided for. 1-226
39. Where power is given to public officers, and the public interests or individual rights call for its exercise, the statutory language, though permissive in form, is in fact peremptory. 12-171
40. The law (sec. 2294, R. S.) is permissive and beneficial, and, its purpose being to facilitate *bona fide* settlement, it should be construed so as not to hamper or embarrass applicants. 2-208
41. A proviso in restriction of a general grant takes nothing out of the grant but the special matter contained in the exception. 2-476; 18-278
42. Proviso, to be construed strictly, as it carves special exceptions only out of the enacting clause. 1-278; 6-216
43. Should be so construed, if possible, to avoid conflict with previous legislation. 9-396; 10-70
44. Conditions precedent must be strictly performed. 1-12, 605
45. Failure of conditions subsequent only taken advantage of by the grantor. 1-605
46. The maxim *expressio unius est exclusio alterius* is applicable to section 3, act of June 14, 1878, limiting contests against timber-culture entries to home-
- stead and timber-culture claimants. (See 5 591.) 2-294
47. Decision of highest judicial authority of a State, expounding a State statute is as much a part of the law as if it were a statutory enactment. 2-14
48. In construing a congressional grant it must be borne in mind that the act by which it is made is law as well as a conveyance. 1-282
49. Rights conferred by, not defeated by departmental regulations. 2-58, 283; 5-429
50. There is no authority to import a word into a statute in order to change its meaning. 1-177, 278
51. Words should be construed in connection with the context. 1-309, 345
52. Will be construed as employing words and phrases in the same sense as that given in long-continued departmental practice under prior statutes with reference to the same subject matter. 7-172
53. General words in a statute following particular words apply to persons and things of the same kind as those which precede. 2-271
54. In legal parlance the singular embraces the plural and the plural the singular. 5-552, 622
55. Words in the Revised Statutes importing the singular number may include several persons or things and words importing the plural number may include the singular. 2-756
(See WORDS AND PHRASES CONSTRUED.)
56. Contemporaneous and uniform interpretation is entitled to weight in the construction of the law, and in cases of doubt ought to turn the scale. 1-2; 5-124, 137, 472, 532, 575, 621; 8-17, 93
57. Departmental construction of, has all the force and effect of law, and acts done thereunder should be protected. 5-169, 261, 382; 9-86, 189, 284, 353
58. Executive construction of, in circular regulations has all the force and effect of law if not in conflict with the statute under which they are issued. 12-138, 155
59. Departmental regulations under, if not in conflict therewith, have all the force and effect of law. 14-587
60. The contemporaneous construction by the officers charged with the execu-

tion of, is entitled to great weight and will not be overturned unless clearly wrong. 13-17, 516

61. Departmental construction of, where doubtful in terms will be received with due consideration by the courts. 25-355

62. Rights acquired under an existing construction of the law will not be impaired by a later and different interpretation. 8-109, 399

63. A changed construction of the law will not impair rights acquired under a former interpretation of the same law. 6-145, 217, 225

64. An erroneous construction of a statute, promulgated as a ruling, has all the force of law until changed, and rights acquired or acts done under it must be regarded as legal. 2-711

65. The rule protecting vested rights on a change of ruling does not apply to one who asserts no such right in himself or through another acquired under the former construction of the law. 10-136

66. Executive construction of, should not be changed except for cogent reasons. 8-255, 279

67. Legislative recognition of the departmental construction conclusive. 1-2; 10-513

68. Repeal of, by implication is not favored in law. 1-419; 8-368; 9-396; 10-70

69. Are repealed by express provision or by necessary implication; in the latter case there must be such a repugnancy between the old and new law that they can not stand together or be reconciled. 9-49

70. An earlier special statute is not repealed by a later general act. 12-401

71. When evidently intended to cover the whole subject to which it relates, it will by implication repeal all prior statutes on the same subject. 16-472

72. Repeal of, by revision does not affect previously acquired rights. 1-419

73. Local and temporary, not repealed by the revision. 1-419

74. Act of August 18, 1856, relative to certain reservations in Florida, was local in its character, and therefore excepted from the general repealing clause of the Revised Statutes (sec. 5596). 2-604

75. An Indian treaty when approved is in effect a legislative enactment. 22-388

STONE LAND.

See MINERAL LAND, 49-56; MINING CLAIM, 845; SCHOOL LAND, 17, 25; TIMBER AND STONE ACT, 125-127.

1. Circular of October 12, 1892, under the act of August 4, 1892, with copy of the act. 15-360

2. Is not withdrawn from agricultural entry by section 1, act of August 4, 1892. 15-360

SULPHUR.

See MINERAL LAND, 29.

SUNDAY.

See FINAL PROOF, 350; MINING CLAIM, 392-393; PRACTICE, 757.

SURFACE RIGHTS.

See COAL LANDS, VI.

SURVEY.

See ACCOUNTS, 39-59; ALASKAN LAND, 15, 23-24, 31, 80-88; MINING CLAIM, VI; PRIVATE CLAIM, II; RIGHT OF WAY.

I. Generally.

II. Deposit System.

III. On Application.

I. Generally.

1. Circular of June 15, 1898, as to resurveys and retracements. 27-79

2. History of Imperial Valley surveys. 40-562

3. It is within the power of the Land Department at any time to retrace any surveys it has made whenever it becomes necessary to the determination of a question pending before it for its decision involving rights in public lands. 34-188

4. Penalty for the destruction of marks of; circular of October 29, 1898. 27-574

5. Circulars of March 13, 1883, October 16, 1896, and June 1, 1909, relative to restoration of lost or obliterated corners. 1-671; 23-361; 38-1

6. Instructions of January 4, 1901, relative to surveys within the limits of the Klamath Indian Reservation. 30-395
7. Of settlers' claims in Black Hills Forest Reserve; instructions of September (7) 22, 1899, under act of March 3, 1899. 29-192
8. The survey of a homestead claim in the Black Hills Forest Reserve, by metes and bounds, under the act of March 3, 1899, will not be made where the claim is not as nearly as practicable in square form and parts thereof are of less width than the smallest legal subdivision. 32-455
9. The provisions in the appropriation act of March 3, 1899, requiring public land surveys thereafter made, whether within or without reservations, to be under the direction and supervision of the Commissioner of the General Land Office, do not preclude the completion, by the Geological Survey, of the subdivisional survey of a township, within a forest reserve, begun under authority of the act of June 4, 1897. 28-292
10. Made under the supervision of the General Land Office. 9-14; 10-99
11. The United States makes its own surveys and its public lands are not surveyed until the plat of the field work has been in due form approved. 40-284
12. A survey approved by the surveyor general under the act of April 29, 1816, is subject to the supervision of the Land Department, and if declared invalid by that department is of no effect. 36-158
13. Supervisory authority of surveyor general in the matter of returns made by subordinate and of work in the field. 1-325; 3-270
14. Date of, fixed by approval. 5-415
15. The date of a township, is not fixed by the date of the work in the field, but by the approval of the plat. 24-54
16. Public lands are not surveyed until the approved plat is officially filed in the local office. 37-390
17. The acceptance by the Commissioner of the General Land Office of a, as returned by the surveyor general, with directions that the plat shall be filed in the local office, amounts to an approval. 23-230
18. Contracts for, under the supervision of the General Land Office. 4-452
19. The making of an entry by a deputy mineral surveyor, while sufficient cause for the revocation of his appointment, will not of itself disqualify him from entering into a contract for the survey of public lands; and the department will not control the exercise of the discretion of the Commissioner of the General Land Office either in refusing or accepting the offer of such surveyor to contract for the survey of such lands. 37-498
20. A deputy surveyor is required by his contract to execute all surveys "in his own proper person," and in case he attempts to delegate this power, and returns surveys as having been executed by him which in fact were executed by another, he is liable to the penalty of having the surveys rejected, notwithstanding they may in other respects conform to all requirements. 36-286
21. The surveyor general should give notice of all contemplated public, in his district, or those coming under his immediate supervision, and invite bids for the performance of the work. 13-643; 17-427, 492
22. No obligation on the part of the Government to enter into a contract for the survey of public lands arises from a mere authorization to the surveyor general to enter into such contract in accordance with bids made upon advertised proposals; it is only when a contract is entered into by the Commissioner of the General Land Office that any obligation on the part of the United States is assumed. 37-497
23. Bonds for United States deputy. Instructions of June 16, 1882. 1-669
24. Additional bond may be required to cover the balance in excess of the entire liability. 4-452
25. Deputy surveyors entitled to mileage for every mile or part of mile run. 3-185
26. Augmented rates allowed where the lands are mountainous or covered with dense timber or underbrush. 8-255, 364
27. Special maximum rates will not be allowed except on satisfactory showing that such payment is necessary. 13-642

28. The act of March 3, 1891, provides for the survey of heavily timbered and mountainous land and for the examination of surveys in the field. 13-661

29. Section 2411, R. S., providing per diem rates, applicable only to California and Oregon. 8-254

30. The price fixed for the original survey of exterior lines should be allowed for retracing and reestablishing such lines if the contract authorizes such work but fixes no price therefor. 5-668

31. A claim for compensation on account of the retracement of old lines, in order to secure a starting point for the work in hand, can not be recognized where it does not appear from the field notes that such action was necessary; nor can the failure of the field notes to show the necessity for such retracement be made good by a supplemental statement. 22-471

32. The fact that a deputy surveyor fails to obtain special authority for making a resurvey is no reason for the disallowance of his account, if, upon examination, it is found that such resurvey was actually necessary and would have been authorized if application had been made therefor. 28-253

33. Compensation should be allowed for the retracement of lines, though no provision therefor is made in the contract, but the instructions of the surveyor general direct such resurveys when absolutely essential, and the necessity for such action is fully disclosed by the field notes of survey. 26-609

34. In the, of a "small holding" claim that has a boundary line in common with an adjacent claim, for which mileage has been charged and allowed, the surveyor is only entitled to compensation for such common boundary line when it is actually run the second time, and such action appears from the record to have been necessary. 28-192

35. A resurvey is authorized, at rates not in excess of those provided by law, where such action is rendered necessary by the imperfect work done on the original survey. 12-505

36. Maximum rates for, allowable if the land is heavily timbered, mountainous, or exceptionally difficult to survey. 10-578

37. The term "dense undergrowth," as used in the statutes wherein provision for augmented rates is made, means such a growth as obstructs the use of the transit and seriously impedes the work of chaining the line. 21-526

38. A contract for, at maximum rates of lands not specifically designated in the departmental approval of such rates, will not be subsequently approved by the Secretary where it is apparent that compensation in excess of intermediate rates is not authorized by law. 17-427

39. To warrant the allowance of maximum rates for surveys of "exceptional" difficulty under the act of August 5, 1892, the lands must present increased difficulties of survey over and above those justifying the intermediate rates of mileage. 17-536

40. Payment of the maximum rates should not be refused where the contract therefor was authorized by the department on due showing. 18-606

41. A deputy surveyor can not claim additional compensation on the ground that the land surveyed was of a different character from that represented in the field notes, unless it is shown that the field notes are incorrect and subject to amendment. 18-220

42. The mileage rate of compensation for, is regulated by statute, and can not be determined by the average mileage per day made during the period covering a survey. 21-526

43. Payment of increased rates not authorized except on conclusive showing of the plat and field notes. 5-668

44. Special instructions with respect to the field notes should be given to deputy surveyors where maximum rates are claimed. 17-536

45. Inspection of, in the field may be made after the work is returned. 4-270

46. Return of, a prerequisite to the acquisition of vested rights under the settlement laws. 8-541

47. Until the township plat of, has been on file for three months final proofs should not be accepted for lands embraced therein. 6-633

48. On the filing of the township plat of survey, intending applicants for lands under the public land laws and those de-

siring to make selection of any portion thereof under congressional grants should have equal opportunity in making claim to the land. 32-648

49. Of township, how filed in local office. Instructions of October 21, 1885. 4-202

50. Due notice of filing of plat to be given. 4-202

51. Plat of, when filed in the local office, is notice to settlers that the lands embraced therein are open to entry. 18-214

52. Filings and entries allowed immediately after the reception of the plat of, at the local office, and prior to the regulations of October 21, 1885, are not invalid for the want of the previous notice of the filing of said plat required by said regulations. 19-48

53. Land is not regarded as surveyed for the purpose of disposition until the plat has been officially filed in the local office, after notice, as provided by instructions of October 21, 1885. 37-118

54. The circular of October 21, 1885, requiring notice to be given of the receipt and filing in the local office of approved plats of survey of townships before applications for entry of lands included in such survey will be received, embraces all public land surveys of a township, whether made in whole or in part, and the same notice will be required of the survey of fragmentary portions of a township made after the regular township survey as in the case of original township surveys. 32-486

55. The instructions of October 21, 1885, requiring that notice shall be given of the receipt and filing in the local office of approved plats of the survey of any township before applications for entry of lands included in the survey will be received, are applicable in the matter of the filing of the plat of survey of an island, or other fragmentary tract of public land, made after the regular survey of the township in which such tract is situated, the same as in the case of the survey of an entire township. 32-184

56. Notice of applications for the survey of islands not designated upon the township plats of survey must be served on the owners of the opposite shores and upon the authorities of the State within which such islands are situated. 32-474

57. After the lands in a township have been surveyed and plat thereof received in the district land office, they are not considered as open to entry, selection, or other form of disposal, until notice, fixing the date of official filing of the plat, has first been given, as prescribed by departmental regulations. 33-643

58. An entry should not be allowed of land included within an amendment to a plat of survey until due notice of the filing of said amended plat has been given. 13-392; 19-91

59. The rule requiring notice of the filing of a township plat of, prior to the allowance of entries of land embraced therein, is only applicable in the case of an approved plat of survey, or where an amendment thereto adds to the area of public lands included therein. 26-107

60. The requirement that 30 days' notice must be given before a plat of survey will be treated as officially filed in the local office, has no application to an amended plat filed for the purpose of showing subdivisions of public lands in a surveyed township rendered fractional by reason of the reservation thereof and the platting and disposition of adjoining public lands. 30-468

61. Suspension of township plat need not necessarily prevent submission of the final proof where the lines of survey are not liable to change. 5-540

62. Suspension of township, precludes the submission of final proof for land embraced therein. 12-633

63. Suspension of, pending settlement of a private claim excuses a homesteader from establishing residence under an entry allowed prior to the order of suspension. 15-215

64. An entry made while the plat of, is on file is not annulled by the subsequent withdrawal of the plat, but suspended during such withdrawal. 13-297

65. Life of entry does not run during suspension of plat. 21-169

66. Where a new plat is required to include relinquished land, and prior thereto an entry is allowed in accordance with the original plat and patent issues thereon, the department has no authority to issue to a transferee new or amended patent for

the additional acreage shown by the new survey. 13-392

67. In case of a discrepancy between the plat in the local office and the one on file in the General Land Office an entry allowed in accordance with the former may stand with a view to its approval when the plat in the General Land Office has been corrected. 15-395

68. Increase of acreage in subdivisions on resurvey does not call for approximation of an entry covering such tracts properly allowed under the first survey. 15-449

69. Withdrawal of plat as affecting pending settlements. 4-333

70. Correction of duplicate plats. Circular of March 19, 1883. 1-670

71. One holding under a purchase or location made in accordance with the plat of, may claim under the boundary lines thereof though a subsequent survey may show a conflict with a confirmed private claim; the question of ownership in such case must be judicially determined. 12-460

72. Where a conflict arises between two entries through a change of subdivisional descriptions on resurvey the superior right is with the prior entryman. 13-219

73. An entryman who acquires a water frontage through an entry based on the recognized plat of, will not be deprived of such right by a subsequent survey that enlarges the acreage of the section. 14-375; 18-328

74. Plats are to be kept at the surveyor general's office and at the local and General Land Office for public information. 2-849

75. Markings on the official plats, showing land as saline, swamp, mineral, or timbered, do not absolutely reserve it from claims if in fact it is proved to be not of the character described. 2-847

76. A decision of the General Land Office, based on the plat of, holding certain tracts of land to be noncontiguous, must be treated as conclusive of the fact so found, in the absence of evidence showing error in said plat. 20-450

77. Copies of plats. (See FEES, 7, 8, 25.)

78. The approved plat of an official, is conclusive as to the designation of tracts

embraced therein, and must govern in the disposal of the lands covered thereby. 24-480

79. Land not included in the approved plat of surrounding lands, as returned and filed, is not surveyed. 36-268

80. Official report as to the returns presumptively correct. 1-568; 8-440, 467; 9-458

81. Returns of, presumptively correct, but the presumption may be overcome. 7-562; 9-437

82. Where the plat of, does not correspond with the field notes, it should be corrected so as to exhibit the subdivisions called for by the field notes. 21-454

83. The field notes of survey are part of the permanent official records of the General Land Office, and as such may be resorted to upon any question, whereon they have bearing, arising in any case before the Land Department. 26-369

84. Amendment of field notes by deputy surveyor does not necessarily vitiate the survey. 1-325

85. Returns of the surveyor general not overcome by a private survey. 7-209

86. The returns of the surveyor general and the record of work done under his direction constitute evidence that can not be overcome by a private survey. 13-64; 16-313

87. Accepted as showing the true area of land covered thereby, in the absence of proof to the contrary. 7-207

88. Sections, or fractional sections, as so returned, must be considered as containing the exact quantity expressed in the return. 17-88

89. The general law governing the survey and subdivision of the public lands makes the same and the quantity of land as stated therein, when duly returned and approved, conclusive for the purpose of disposal of the lands. 31-64

90. The conclusive effect of the surveyor general's return, as to the quantity of land in a legal subdivision, is only operative while such subdivision remains public land. 26-369; 28-187

91. A contract for the establishment of an initial point of, by means of a traverse line will not be approved where such point, when established, would be of doubtful certainty. 13-710

92. Subdivisions of sections; circular provisions. 5-699; 11-603

93. Subdivision of sections; see regulations of October 16, 1896. 23-375

94. Subdivisional descriptions not shown by, should not be employed in the issuance of patent. (See 16-273.) 16-424

95. Fractional sections to fall on west side of township. 5-17

96. In closing a system of surveys progressing from west to east upon another system extending from a different meridian, deficiencies may be deducted from the eastern range of sections. 6-696

97. One system of surveys closed upon another (California), and the last range of townships was found to be about half the regular width; as they could not be otherwise surveyed, they are accepted as surveyed according to law. 2-470

98. The line of ordinary high-water mark the limit of water boundary. 1-213, 243

99. "High-water" mark on the shore of a bay fixed by running along the line of ordinary high water on the main coast line, cutting across the mouths of the streams which intersect the body of the peninsula. 2-346; 5-488

100. The manual of surveying instructions requires the meander of a tide-water stream on both sides from its mouth up to the point where the tides cease. 23-393

101. Of lands bordering on navigable waters only extends to high-water mark. 10-369

102. In the survey of land bordering upon a body of water the meander line is not run as a boundary, but for the purpose of ascertaining the quantity of land in the subdivisions rendered fractional by reason of their bordering upon the water. 3-200; 6-555; 13-64; 28-444

103. Field book should show all water courses. 1-325

104. Character of streams that should be meandered. 8-158

105. Of streams by meander lines limited to streams of specified width. 21-7

106. Land excluded from the public, by the establishment of a meander line of an alleged body of water that in fact did not exist at the time of such survey, should be surveyed and disposed of under the public-land laws. 27-119

107. Showing a meandered stream that does not in fact exist may be reformed in accordance with the changed conditions. 12-73

108. The improper meander of a stream will not defeat an entry subsequently allowed for lands lying on both sides of said stream. 12-556

109. In the case of a, that is closed upon a meander line run for the purpose of separating arable lands from alleged swamp and overflowed lands, lying upon the borders of a lake, thus leaving a tract unsurveyed between the shore of said lake and said meander line, parties taking title to the lands so surveyed acquire no riparian rights to the unsurveyed lands lying beyond said meander line. 25-199; 30-521

110. A meander line, run along one bank of a stream for the purpose of a boundary between the public domain and a reservation, will not be treated, after the restoration of the reserved lands, as bringing said stream within the category of "meandered" streams, where it does not fall within the class of streams properly meanderable under the law. 18-135

111. On proper showing, hearing may be ordered to determine the existence or non-existence of a stream that is represented on the plat as "meandered." 15-342

112. Meander lines of land that borders upon permanent bodies of water determine the quantity of land for sale, but the water line forms the true boundary. 3-200; 6-555; 13-64; 28-444

113. Lines of, run along permanent bodies of water are run as meander lines, the water itself being the true boundary line of the land to be sold, and all accretions after survey and prior to patent pass under the patent when issued, and the Government thereafter is not entitled to subsequent accretions. 26-453

114. Purchasers of lands bounded by an alleged meander line have no vested rights that will prevent the Government from taking action to ascertain whether there was in fact a body of water existing upon which to base said line. 26-319

115. The purchaser of a meandered fractional tract takes to the water line, and if the department has any authority thereafter to order a resurvey of such land, it

should only be exercised in exceptional cases, on a clear showing of flagrant mistakes and disregard of regulations in the execution of the original survey. 27-330

116. The land lying between a properly established meander line of a lake and the shore line is not unsurveyed land, but forms an adjunct of the adjacent subdivision. 20-315

117. The department has no authority to order the, of a former river bed lying between lands that have been finally disposed of by the Government. 22-710

118. Proprietors bordering on streams not navigable, unless restricted by terms of their grant, hold to the center of the stream. 6-583, 637

119. The boundary of a tract bordering upon a body of water is the water line, and a patent for a tract thus bounded conveys all the land included by the meander line. 6-555

120. In the extension of, over lands lying between the meander and shore line of a shallow lake, where the Government owns a portion of the lands adjacent thereto, the dry land should be surveyed in such manner as to leave the rights of riparian owners undisturbed. 19-439

121. A final decision of the department directing the survey of a tract as public land, precludes the subsequent consideration of a claim thereto based on riparian ownership. (See 26-453.) 19-17

122. Claims upon unsurveyed lands and bordering on bodies of water, which under the regulations governing the survey of public lands would be meandered upon extension of the public surveys, should be meandered to conform to what would be the line established by a public survey and upon which the public-survey lines would be closed. 33-593

123. The artificial elevation of the level of a meanderable body of water can not be permitted arbitrarily to substitute a new mean high-water mark for the natural mean high-water mark which the regulations contemplate as defining the meander course. 33-593

124. The Land Department has no authority to meander an artificial lake which was not established until subsequently to the approval of the survey of the township and after a large part of the lands

therein had been disposed of by the Government according to the official plat. 33-50

125. The jurisdiction of the Land Department is confined to public lands, and does not extend to lands that have passed into private ownership; hence if through mistake, or otherwise, a tract is surveyed as public land, when in fact it is private property, such survey will not change the status of the land so that the department will thereafter be prevented from taking proper action to protect the rights of the private owner. 26-453

126. The Land Department will not disturb the public surveys where a resurvey may affect the rights or claims of anyone resting upon the original survey, except upon the clearest proof of accident, fraud, or mistake. 32-550

127. The approval of a township survey which purports to show that all public lands within the limits of such township have been surveyed, raises such a strong presumption in favor of the correctness of such survey that no additional surveys should be made, except upon clear proof of evident mistake or fraudulent conduct on the part of those charged with the execution of the surveys. 32-474

128. While the Government may correct its surveys so as to extend them over lands improperly omitted therefrom, yet when such surveys have been approved, they should not be disturbed, especially after the lands surveyed have been disposed of and after a long lapse of time from the approval of the survey, except upon the clearest proof of an evident mistake or fraudulent conduct on the part of those charged with the execution of such survey. 32-329

129. Of a tract of land and the approval thereof do not preclude the department from reexamining the matter at any time before the legal title to the land has passed out of the United States, setting aside such approval, and annulling the survey, if the facts disclosed by the reexamination demand such action. 26-453

130. The Land Department has authority to examine into the correctness of the public surveys and to cause a resurvey to be made of any public lands that were erroneously or improperly omitted from

survey when it is clearly shown that such lands were erroneously or improperly omitted and that no sufficient reason then existed for not extending the public surveys over them; but it has no authority to survey as public lands tracts which were at the date of the township survey properly indicated as covered by the waters of an apparently permanent lake.

32-545

131. Where a meandered lake is shown on the township plat, the Land Department would not be justified in concluding that such lake did not exist at the time of survey, and in assuming jurisdiction to survey the lands embraced within the meander lines, on the mere showing that within such lines there are ridges and knobs that were not covered with water at the time of the survey, in the absence of proof that the topography and configuration of the adjacent lands is such that no basin could have existed substantially in the form and to the extent indicated by the survey.

32-542

132. Lands in the State of Iowa covered by the waters of a lake which was properly meandered at the time of the survey of the township passed to the State by virtue of its sovereignty, and are therefore no longer under the control of the Land Department as public lands.

32-550

133. A final judgment that the meander line of a lake is not properly established, and that a further survey of the lake boundary should be made, determines the status of the lands involved, is conclusive upon all persons, whether parties to the proceeding or not, and precludes further departmental action therein. (See 26-453.)

21-344

134. The department has the authority, after the tracts designated by a Government survey as fractional, by reason of bordering upon a body of water, have been disposed of, to examine into the correctness of such survey, and if that examination demonstrates that there was no body of water to prevent the extension of the township, section, or subdivision lines, to cause the lands thus erroneously omitted from survey to be surveyed, and disposed of as public lands of the United States.

29-514

135. The United States does not, by the approval of a survey, part with its title to lands that are erroneously omitted from said survey.

30-527

136. The United States has authority to examine into the correctness of a survey, and to cause lands erroneously omitted from survey to be surveyed and disposed of as public lands.

30-521

137. The power to make and execute surveys of the public lands belongs exclusively to the political department of the Government; and the Department of the Interior is the proper tribunal to determine whether lands were, at the date of survey, part of a lake or were public lands erroneously omitted from survey.

30-527

138. Sudden change of a river's course does not affect title or boundary.

1-213; 24-372

139. Where a sudden change occurs in the course of a navigable river that forms the boundary between a State and a Territory, the relation lying within the State is not the property of the United States, or subject to, as such; but that portion of the abandoned bed of the stream lying within the Territory is the property of the United States and therefore subject to.

27-230

140. Segregation of swamp land does not render a township fractional.

15-16

141. Metes and bounds generally conclusive.

5-98

142. In case of variance between general description and the field notes of boundary lines the latter control.

3-521

143. In the execution of, courses and distances must yield to natural monuments named in the description of the land.

13-628

144. In running lines of a, where the monuments called for are on the ground, and there is found to be a variation between the calls in the field notes and the monuments, the latter must control; in the absence of monuments the surveyor must be guided by the field notes.

20-220

145. Should not be approached if the corners are not marked on the ground as indicated therein and as required by the regulations.

11-93

146. Rules for the restoration of lost and obliterated corners.

1-671

147. Restoration of lost and obliterated corners; regulations of October 16, 1896, and June 1, 1909. 23-361; 38-1

148. Under Government survey a tract may be identified by quantity. 5-98

149. Appropriation for, confined to "lands adapted to agriculture and lines of reservations" is available for survey of a private claim the extent of which has been finally settled and a survey thereof directed. 8-254

150. Subdivisional surveys in "No Man's Land" may be made from the appropriation of October 2, 1888, if such money is not required for the survey of townships occupied by actual settlers. 8-613

151. Under the act of August 18, 1894, making an appropriation for public, the expenses of a hearing to determine the character of a survey alleged to be fraudulent may be paid from said appropriation, as well as the expense of such field work as may be necessary. 19-301

152. The commissioner has the authority to locate the boundary line of a patented private claim, if such action is necessary to close the surveys of the public lands, and to use for that purpose so much of the appropriation for the survey of the public lands as may be required. 17-105

153. The cost of surveying public lands and properly marking the boundary line necessary to the segregation thereof from an Indian reservation is properly payable out of the appropriation for the survey of public lands, even though in making said survey, coincidentally, the boundary line of said reservation is surveyed. 17-492

154. Special instructions may be issued *nunc pro tunc* to cover a survey of Indian allotments executed at the request of an allotting agent, though not authorized by the approved contract, it appearing that the survey was actually necessary and to the interest of the public service. 19-457

155. Should be closed upon the lines of a complete grant. 6-347

156. Where the Northern Pacific Railroad has been constructed across unsurveyed land, and a survey of the public lands is thereafter made and approved, in which the lines of survey are extended

across the railroad right of way as though it were a mere easement, such survey will not be set aside and a resurvey made for the purpose of closing the lines of survey upon said right of way; it appearing that many tracts adjoining said right of way have been disposed of under the existing survey, that neither the interest of the United States nor of the company requires such action, and that there is no difficulty in identifying the portion of each subdivision that remains subject to settlement and disposition as public land. 28-412

157. Of public land not delayed on account of indefinite Indian claim. 5-557

158. Extension of, for the adjustment of conflicting claims. 5-369

159. Of township, if false or fraudulent, calls for resurvey, and pending examination in the field entries of the land can not be allowed. 9-14

160. Resurvey should be ordered where the work is found inaccurate. 13-661

161. No action for the resurvey of a township should be taken during the pendency of an appeal from the rejection of the original. 13-238

162. The department has no authority to order the resurvey of a patented private claim while the patent is outstanding. 14-557

163. A charge of fraud or irregularity in the matter of closing the public surveys on a patented private claim will not be investigated in the absence of a definite showing in support of such charge. 20-37

164. Lands outside the treaty boundary of a reservation not affected by a withdrawal of the township plat for the purpose of locating said reservation. 3-303

165. Where, on claimant's application, a resurvey and an amendment of plats (California) was made and approved which gave him a full quarter section (160.64 acres), the matter will not be further disturbed. 2-469

166. Survey of town grant will not be disturbed, the boundaries conforming to instructions. 3-387

167. Of a townsite, duly approved and filed with the board of trustees, will not be modified in an *ex parte* proceeding. 18-154

168. Character of, required in case of warrant location. 1-6

169. Claims based on fraudulent survey of former Indian reservation adjusted in conformity with correct description. 3-288

170. Of the exterior lines of an Indian reservation does not take the lands embraced within said reservation out of the category of unsurveyed lands. 16-66

171. In the case of a military reservation established on surveyed land, where the outboundaries do not coincide with the lines of the public, and the fractional portions of the sections lying outside of the reservation are thereafter surveyed and lotted, the complements of said sections within the reservation, on the subsequent abandonment thereof, remain within the category of surveyed lands, as shown by the two plats of survey, which should be taken together and treated as the single official plat. 22-596

172. Of a mining claim or townsite is a "public survey" when the claim or entry passes into a patent. 14-108

173. Of boundary line between Nebraska and South Dakota. Instructions of December 24, 1892. 15-594

174. If, under an application to purchase lands in Alaska, the survey is correctly executed in accordance with the terms of the contract and the rules and regulations governing such surveys, the surveyor should not be made to suffer a loss of the pay for the work done because the application must be denied on grounds for which the applicant is responsible. 22-696

175. In Alaska the deputy surveyor, in isolated localities, may administer the requisite oaths to chainmen and others. 13-608

176. There is no statutory authority under which a notary public can be recognized as a proper officer before whom a deputy surveyor can take the final oath on the completion of a; hence the survey of a townsite can not be approved where said oath is administered by such officer. 27-450

177. In the prosecution of, in the Indian Territory under the supervision of the Director of the Geological Survey the Secretary of the Interior may authorize oaths to be administered by any official

who may be convenient to the persons in the field. 21-386

178. The words "public lands adjacent thereto," in the act of June 4, 1897, directing survey of forest reservations, construed. 24 588; 25 140

179. The United States surveyor general of a State on the completion of the public, therein, and the consequent closing of his office, is required to deliver the plats and records of said office to the proper officer of said State; and thereafter, if it appears that the plat of any of such surveys is not found on file in the General Land Office, the commissioner may procure from the proper State authority a certified copy of said plat. 27-47

180. Records of public, transferred to certain States. 23 375

181. A purchaser of alleged swamp land from the State of California after survey but before title had passed to the State under section 2488, R. S., takes it subject to the power of the Secretary of the Interior to reject the survey and to require that a correct survey be made. 31-303

182. Where a fractional section in California has been described differently under the original survey of April 27, 1869, and the Carpenter survey of April 6, 1894, and selection thereof is made by a railroad company, as indemnity, under the description given in the original survey, such selection should be considered as a selection of the tract as described under the later survey, and patent should issue accordingly. 31-272

183. In the absence of express provision in section 2488, R. S., giving to the surveyor general final authority over surveys in California, the power of supervision and direction lodged in the Commissioner of the General Land Office and the Secretary of the Interior by sections 441, 453, and 2478, R. S., necessarily extends to surveys of public lands in that State in like manner as to other public land transactions. The Secretary is not bound to accept and recognize for any purpose a survey of the public lands in California or elsewhere where there is mistake or fraud in its execution or approval, even though the returns or notes accompanying it show a portion of the

land embraced therein to be swamp and overflowed. 31-303

184. Where the subdivision of a township is made by protraction and the areas are estimated, such action, if by proper authority, constitutes a public-land survey thereof, and upon approval of the plat of the survey so made the subdivisions thereby established are subject to disposal according to the areas estimated and as they appear upon the plat. 35-303

185. It rests in the discretion and judgment of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior, to determine whether the public interest demands the survey of a township, and a settler upon land in an unsurveyed township, however meritorious his claim may be, can not as a matter of right demand a survey of the tract settled upon. 35-330

186. While the act of July 1, 1902, providing for the resurvey of certain townships in Imperial Valley, California, contemplates that the lands occupied by settlers and described according to private surveys should be recognized and marked by an official survey, it does not contemplate a departure from the established system governing the surveys of public lands or recognize any irregularity of survey, and where conflicts are unavoidable the lines of the different claims should be so adjusted as to produce the least inequality between the several claims. 39-471

II. Deposit System.

See CERTIFICATE OF DEPOSIT.

187. Circular instructions regulating surveys under the deposit system. 1-665;
3-750, 599; 4-488

188. Circulars and instructions with reference to deposit surveys prior to June 6, 1885, revoked. 3-599

189. Application for, under the deposit system; circular of August 7, 1895, under the amendatory act of August 20, 1894. 21-77

190. Survey on deposit made by railroad company; circular of April 8, 1899, under the act of February 27, 1899. 29-632

191. Deposit for, is an advance to the Government for the survey of its own land. 4-431

192. Of township under deposit should not be allowed on the application of one settler. 4-451

193. Application for survey under section 2401, R. S., will not be entertained if not made in accordance with departmental regulations. 13-455

194. Section 2401, R. S., as amended by the act of August 20, 1894, does not authorize the survey of fragmentary portions of a township, but authorizes only the survey of entire townships. 31-77

195. The right to a, under the deposit system does not rest in the discretion of the commissioner, but is a matter of right in the settlers whenever they have shown a full compliance with the law and regulations and the township is within the range of the regular progress of public surveys. 6-537

196. Applications for, under the deposit system, signed by all the applicants, is sufficient under the law and regulations, each settler not being required to sign a separate application. 6-537

197. Desert lands will not be surveyed under the deposit system without showing settlement. 3-331

198. Railroad company can not procure, under section 2401 *et seq.* and act of March 3, 1879, as settlers. 1-303

199. The right to make deposits not enlarged by the act of March 3, 1879. 1-309

200. Where several, are embraced in one contract, with liability therefor payable from special deposits for the different surveys, no part of any deposit should be used in paying for a survey for which it was not intended. 19-32

201. When the appropriation in the hands of the surveyor general (California) is insufficient to complete the township surveys already contracted for, special deposits by settlers for said purpose may be authorized by the commissioner. 2-462

202. When the cost of survey exceeds the amount deposited an additional deposit must be made, and the township plat will not be filed until all costs are paid. 3-184

203. The extension of a, which creates a liability in excess of the deposit made therefor, is at the risk and expense of the deputy doing the work. 19-32

204. Authorized under the deposit system, though portions of the land are heavily timbered, if such lands are more valuable for agriculture than for the timber. 10-577

205. Allowed to fix claimed boundaries of private grant on deposit of estimated cost. 4-430

206. The retracement of lines previously surveyed is not authorized under the deposit system. 19-32

207. Money deposited for the cost of office work on a mineral survey and remaining unexpended may be applied on new. 8-102

208. Claim for services should not be rejected where the work is performed in good faith on application sufficient under existing rulings. 4-451

209. A contract for the survey of "all lines necessary to complete the survey" of a township authorizes payment, at the contract rate, for the survey of the township exterior line, where the establishment of such line is necessary to the stipulated survey, though said line can not be surveyed without coincidently extending a meridian line. 19-32

210. The withdrawal, September 8, 1903, under the act of June 17, 1902, of lands subject to irrigation under the Mojave Valley project, affected only public lands within the limits of the withdrawal, and furnishes no ground for the rejection of an application for the survey of lands within the limits of such withdrawal and also within the limits of a railroad grant, under the provisions of the act of February 27, 1899, where the railroad company has fully complied with the provisions of said act and the application is otherwise subject to approval. 33-195

III. On Application.

211. Discretionary with the Land Department whether a survey of a specific tract will be allowed. 16-513; 21-454

212. Of a specific tract will not be ordered in the absence of notice to adverse claimants. 16-513

213. Not ordered of the former bed of a meandered lake. (See 6-639; 12-433; 13-588.) 6-20

214. May be allowed of land formerly covered by the waters of a shallow meandered lake that is subsequently drained by artificial means, and thus rendered valuable for agricultural purposes. (See 13-588.) 12-433

215. Of land covered by the waters of a meandered nonnavigable lake where the adjacent lands have been sold by the Government, not allowed, as the land covered by such lake belongs to the adjoining owners. 13-588

216. Will not be authorized of land that lies between the meander and water line where the meandered tract has been sold by the Government and the title thereto has passed to subsequent purchasers. 13-64

217. If none of the lands contiguous to a former nonnavigable meandered lake have been patented or applied for, the land previously covered by water may be surveyed. 14-119

218. The Government has no jurisdiction to order, when the land lies within the meander line of a nonnavigable lake and the lands adjacent thereto have been patented or applied for. 14-274, 637

219. Conceding that fraud or gross mistake in the original will warrant the extension of, over a meandered tract (shallow lake) where the adjacent land has been disposed of, such action should not be taken after the lapse of time in the absence of positive proof. 15-433

220. A hearing may be ordered, with a view to a resurvey of the boundaries of a lake, on a showing made that the original meander line did not conform to the shore line, but fraudulently excluded from said survey a large amount of land. 20-28

221. Where it is apparent from the record that in the, of a township, a large body of land adjacent to a navigable lake has been omitted through the establishment of a meander line between alleged swamp and dry lands, instead of at the true shore line of the lake, a survey of the lands so omitted should be made. 24-68

222. An order may properly issue for the, of a tract of land omitted from the original survey through the erroneous

meander of a slough instead of a river proper. 24-392

223. May be ordered, in the exercise of a sound discretion, of land between the meander line and shore of a shallow lake where the Government owns the land adjacent if the frontage is of sufficient extent and the recession has left a space large enough to warrant the extension of the lines. 16-256

224. May be ordered of land improperly excluded as the bed of a lake when in fact no such body of water existed. 5-369

225. An application for, of a small tract of land, lying between the meander line of a lake and the water's edge, will not be granted, where the original survey has stood for a number of years, even though the meandered boundary of the lake may not exactly indicate the true water line. 17-565

226. The department should not order the, of a small body of land lying between the water's edge and the meander line of a river, where the original survey has stood for a number of years, and the rights of riparian owners have intervened. 21-290

227. Marsh lands excluded from original and subsequently reclaimed are subject to, under the regulations of July 13, 1874. (See 12-436.) 6-639

228. The revocation of the circular of July 13, 1874, will not defeat rights acquired thereunder. 6-639

229. Application for, along a stream of variable course will only be granted upon the most careful inquiry. 4-50

230. Survey of an island will not be made where it has not the fixed and permanent characteristics which make it a solid part of the earth's surface. 2-456

231. Of an island in a stream not navigable denied where *prima facie* the island belongs to the owner of the land on the nearest main shore and such survey would be an interference with vested rights. 6-583, 637

232. Of an island not allowed where the title thereto appears to be in the applicant as riparian owner. 6-637; 27-65

233. An application for, of an alleged island in a navigable stream will not be allowed, where it is apparent that the

tract in question belongs to the riparian owners. 27-60

234. Of an island in a nonnavigable stream will not be granted. 13-724

235. An application for, of an island lying in a meandered nonnavigable stream will not be allowed. 25-413

236. An application for, of an island, in a meandered nonnavigable river, existing at the date of the township survey but omitted therefrom, must be denied, where the right of the riparian owners to the bed of the stream is recognized by the State in which the land lies. 25-474; 27-380

237. A hearing should be ordered on an application for, of an island in a non-navigable stream alleged to be above high-water mark, and to contain more than three legal subdivisions, and to have been in existence at the date of the adjacent surveys, for if an island of such character was omitted from the public survey through fraud or mistake an order for its survey may properly issue. 26-24

238. An island, not above high-water mark, but subject to overflow, and situated in a navigable river, is not subject to, as land belonging to the United States, for the proprietorship of the shores and beds of navigable rivers below high-water mark, within the limits of the States, belongs to them by their inherent sovereignty. 25-510

239. An order for, of an island in a meandered river, within an Indian reservation, may be properly made where it appears that said island existed at the date of the survey of the riparian lands as at present, and should have been included then in the official survey. 21-290

240. Of an island will be denied where it appears that said island is embraced within the limits of a former survey and that the land as thus surveyed has been disposed of. 12-304, 681

241. Of an island formed in a river after the survey and disposition of the adjoining shore lands can not be ordered, as the land thus formed does not belong to the United States. 14-433

242. Of an island should be allowed where such island has been omitted from

the survey of adjacent land and has not been disposed of by the Government.

14-115; 27-68

243. An island is properly surveyed and returned as an independent tract where the lake within which it lies is made the boundary of the sections lying on the rim of said lake.

17-88

244. May be properly allowed of an island in a navigable lake, where it appears that such island was in existence at the date of the original survey, but was omitted therefrom.

17-326

245. On application for, of an island in a navigable lake in the State of Wisconsin, the adjacent shore owners are not entitled to notice as under the law of said State such owners are without interest.

17-326

246. Of an island in a meandered river may be properly ordered where it appears that said island existed substantially at the date of the survey of the riparian lands as at present and should have been included then in the public survey.

16-496

247. Extension of, over an island previously omitted is a departmental determination that the land belongs to the Government, and on the subsequent entry thereof the adverse rights of riparian owners must be settled in the courts. (See 26-453.)

15-89

248. An order for, of an island and the sale thereof as an isolated tract is a final departmental adjudication that the land is the property of the United States, and the determination of alleged adverse rights of riparian owners must thereafter be left to the courts. (See 26-453.)

17-578

249. Of an island may be granted on proper application though a former one has been rejected.

9-625

250. Riparian rights to be regarded in the case of the survey of an island situated in a river.

3-561

251. The department may properly decline to entertain an application for the survey of an island, where, in the opinion of the Secretary of War, the island should be retained by the Government, with a view to its future occupation for military purposes.

29-638

252. When the meander line of a survey bordering on a lake was established at a time of extreme high water, and the

recession thereof shortly thereafter leaves a large body of land between said line and the permanent shore line, such reliction should be included within the public survey.

7-527

253. Resurvey to include omitted lands ordered.

3-446

254. Not granted for tract not claimed or classed as public lands.

1-310

255. Of isolated tracts formed since the original survey denied by the department where the commissioner recommends such action and objection is made to the application, unless the denial deprives the applicant of a right.

12-137

256. Order for, and public offering of land as an isolated tract preclude the allowance of a preemption filing therefor tendered by the applicant for survey and based upon an alleged prior settlement right.

12-397; 14-458

257. Extension of, as a rule, is restricted to townships within the range and progress of settlement.

16-528

258. Desert lands only surveyed in the course of public survey except under section 2401.

3-325, 331

259. To determine the area of an alleged agricultural tract, made fractional by adjacent mineral claims, may be allowed on the *ex parte* application of a settler.

18-418

260. Application of the State for, with a view to future selections may be allowed though the land is not settled upon nor fit for settlement and agriculture; but care should be taken that an undue proportion of the sum set apart for surveys is not thus used to the exclusion of the survey of townships occupied by settlers.

16-528

261. An application of a State for, and reservation of a township under the act of August 18, 1894, must be denied, where, prior to such application, a survey of the township has been ordered for the benefit of settlers.

24-122

262. The reservation from adverse appropriation of lands within a township for the survey of which application has been made by the governor of the State, with a view to selection thereof by the State, for a period from the date of the filing of the application until the expiration of 60

days from the filing of the township plat of survey, as provided for in the act of August 18, 1894, is conditioned upon publication of the notice provided for in said act, to be begun within 30 days from the date of the filing of the application.

32-240

263. The provision of the act of August 18, 1894, authorizing the survey, on application in behalf of the State, of any unsurveyed townships of public lands therein, and the withdrawal thereof from the date of the application until the expiration of 60 days from the filing of the township plat, with a view to satisfy the public land grants to the State, authorizes and requires the withdrawal of *all* of the lands in the townships for the survey of which application is made on behalf of the State.

34-433

264. The right of a State to the withdrawal authorized by the act of August 18, 1894, is not limited to the exact area necessary to supply the deficiency in its grant existing at the time of the filing of the application for survey.

36-479

265. The provisions of the act of August 18, 1894, authorizing the withdrawal of lands "with a view to satisfying the public land grants" of the several States therein named, contemplates withdrawals in aid of both original and indemnity selections.

36-479

266. The filing on behalf of a State of an application for the survey of lands under the act of August 18, 1894, and the publication of notice thereof as provided by the act, operate as a withdrawal thereof, notwithstanding no formal notice of withdrawal was given the local officers.

36-20

267. No such preferential right is secured by the application of a State for the survey of lands under the act of August 18, 1894, as will prevent the inclusion of the lands within a national forest.

38-219

268. An application by a State for the survey of lands, with a view to selection thereof, does not operate as an absolute withdrawal of the lands, but merely subjects them to the preferred right of the State to make selection within 60 days from the filing of the approved plat.

37-70

269. An application by a State for the survey of a township, with a view to the selection of lands therein, operates only to secure to the State a preferred right of selection, and does not reserve the lands from other disposition until the expiration of three months from the filing of the approved plat, or prevent the acceptance of applications therefor subject to the superior right of the State.

37-74

270. The right of a State to apply for a survey under the act of August 18, 1894, with a view to obtaining a preferred right of selection, is not limited to an area sufficient to satisfy its grant.

37-68

271. The right of a State by virtue of an application for survey under the act of August 18, 1894, is superior to that of a homestead applicant who made settlement subsequent to the filing of the State's application for survey.

37-68

272. The filing of an application for survey under the act of August 18, 1894, having such survey made, and paying the fees therefor, do not, in the absence of publication of notice of the application as provided by said act, constitute a "lawful filing" within the meaning of the excepting clause of the proclamation of June 12, 1905, reestablishing the boundaries of the Washington forest reserve.

37-2

273. No preference right of selection inures to the State by virtue of an application for survey of lands under the act of August 18, 1894, where the State fails to publish notice of the application as required by the act.

39-343

274. Where an application for survey by the State under the act of August 18, 1894, was addressed to the surveyor general for the State and the commissioner of the General Land Office and filed with the surveyor general and by him transmitted to the commissioner, the published notice of such application will not be held defective merely because publication thereof commenced prior to receipt of the application by the commissioner.

39-583

(For further decisions under act of August 18, 1894, see *DESERT LAND*, III.)

SURVEYOR GENERAL.

See *LAND DEPARTMENT*, VI.

SWAMP LAND.

- I. Grant.
- II. Selection.
- III. Indemnity.
- IV. Character of Land.
- V. Adjustment.
- VI. Unsurveyed Land.
- VII. California.
- VIII. Certification.

I. Grant.

1. The act of September 28, 1850, was a present grant, vesting in the State from the day of its date the title to all the swamp and overflowed land then not sold, and requiring nothing but determination of boundaries to make it complete. 1-312, 320; 2-472, 645, 670; 4-415; 5-517; 7-256

2. The act of 1849 not merged in the later act. (See 17-440.) 5-517

3. The act of September 28, 1850, removed the restrictions and exceptions in the grant made to the State of Louisiana by the act of March 2, 1849, and vested the title in said State to all the swamp and overflowed lands which remained unsold at the passage of said act of 1850. 17-440; 26-5

4. By the act of March 2, 1849, all the, in the State of Louisiana were granted to said State, except lands bordering on streams, rivers and bayous, which were treated by Congress as theretofore reclaimed and falling within the provisions of the act of February 20, 1811. (See 26-5.) 24-231

5. At the date of the general act of September 28, 1850, there were no lands in the State of Louisiana subject to its operation as all of the, had, prior thereto, been granted to the State by the special act of 1839. (See 26-5.) 24-231

6. Section 16 in each township in the State of Louisiana, reserved for the support of schools by section 10, act of March 3, 1811, did not pass under the swamp-land grants to said State by the acts of March 2, 1849, and September 28, 1850. 30-276

7. The State of Louisiana is not entitled to the purchase money received by the Government from the sale of lands in the

Maison Rouge grant, claimed by the State to be swamp, where such lands were in a state of reservation at the date of the swamp grants to the State, although such lands may have been swamp and overflowed at the date of said grants and sold subsequently thereto. 30-472

8. Swamp grant compared with the school grant and same construction where the lands are embraced within a temporary reservation. 8-310

9. Whether land does or does not pass under the grant is determined by the character of the greater part of each legal subdivision at the date of the grant. 2-644; 4-416; 5-682; 8-555; 14-247, 253

10. The grant of, to the State of Louisiana took effect upon lands of such character within Fort Sabine Military Reservation, created by prior Executive order, subject to the right of the United States to use the same for military purposes during pleasure; and, on the subsequent statutory abandonment of said reservation, the title and right of possession in and to said lands vested in the State by virtue of said grant. 21-357

11. Swamp and overflowed lands within the Fort Sabine Military Reservation, in the State of Louisiana, at the dates of the swamp-land grants of March 2, 1849, and September 28, 1850, did not pass to the State by virtue of said grants. 33-13

12. Where a State has accepted the grant of swamp and overflowed lands made by the act of September 28, 1850, has disposed of and conveyed all its interest in certain of the lands claimed thereunder, and requests for the issuance of patent therefor, as provided by said act, have been made by different governors of the State, such patent may issue to the grantees of the State without further request on the part of the present governor. 32-265

13. Fee of, passed to the State (Iowa) at the date of the grant, subject to the right of Indian occupancy, and the right of possession attached to the fee when such right of occupancy was extinguished. 10-285

14. By the grant of, the State of Wisconsin acquired the title, the naked fee, to the swamp land embraced within the

Lac de Flambeau Reservation, subject to the right of Indian occupancy; and, while said right exists, no action should be taken under said grant looking toward a disturbance of the Indian right. 19-518

15. The fee to, in the State of Wisconsin embraced within the right of Indian occupancy provided for by the treaty of October 18, 1848, passed to the State by the subsequent swamp grant; but the right of possession under said grant remained in abeyance until such time as the Indian right of occupancy should be surrendered, or otherwise ended by the United States. 25-17

16. When by the treaty of February 11, 1856, the Indians ceded to the United States certain lands embraced within their right of occupancy, such relinquishment, as to the lands covered thereby, though for the expressed purpose of locating the Stockbridge and Munsee Indians and other Indians thereon, operated to remove the only obstacle to the merger of the right of possession with the fee that passed under the swamp grant, and entitled the State to receive patents under said grant. 25-17

17. Lands temporarily reserved for the benefit of the Government at the date of the grant are not excepted therefrom, but pass as of the date of the grant on being relieved from the reservation (Michigan). 8-308

18. A temporary reservation of lands for a special purpose does not defeat the operation of the swamp grant but suspends the execution thereof, and on the removal of such reservation the adjustment of the grant may proceed. 17-440

19. The act of March 2, 1889, providing for the restoration and disposition of certain lands in Louisiana, confers a preference right upon settlers on said lands, and to that extent contemplates a diminution of the swamp grant to said State; but as the rights of the State and of the settlers are derived from the same source, priority of grant must determine the priority of right. 17-440

20. Circular of June 3, 1908, under act of May 20, 1908, relative to drainage of swamp and overflowed lands in Minnesota. 36-477

21. By the terms of the proviso to the act of March 12, 1860, extending the provisions of the swamp-land grant to the State of Minnesota, said grant is not operative as to any lands that, prior to selection by the State, have been "reserved, sold, or disposed of" pursuant to any law enacted prior to said act. 22-388

22. Lands swamp and overflowed and rendered thereby unfit for cultivation, not reserved or granted by the United States on March 12, 1860, the date of the act granting swamp lands to the State of Minnesota, passed to the State under said grant, and are therefore excepted from the provisions of the act of January 14, 1889, relating to the disposition of the ceded Chippewa lands. 32-328

23. Swamp and overflowed lands lying within sections 16 and 36 in the four townships in the White Earth Indian Reservation, in the State of Minnesota, ceded to the United States under the act of January 14, 1889, did not pass to the State under its grant of swamp lands made by the act of March 12, 1860, said sections being on that date in reservation for school purposes by virtue of the acts of March 3, 1849, and February 26, 1857. 32-325

24. The White Earth Indian Reservation established by the treaties of May 7, 1864, and March 19, 1867, was not made in pursuance of any law enacted prior to the act of March 12, 1860, granting, to the State of Minnesota: hence, lands of the character granted, lying within said reservation are not thereby excluded from the operation of said grant. 27-418

25. Lands in the State of Oregon reserved under the treaty concluded October 14, 1864, with the Klamath and other tribes of Indians, were reserved in pursuance of a law enacted prior to the swamp land grant of May 12, 1860, to said State, and for that reason are excepted from the operation of said grant. 32-664

26. If in pursuance of a treaty with the Indians prior to the act of March 12, 1860, lands occupied by them are then regarded as reserved for their benefit, and are subsequently so treated, such lands are accordingly excepted from the operation of the swamp land grant. 22-388

27. The act of January 14, 1889, did not contemplate the disposition of any of

the Indian lands opened to settlement thereby except in the manner and for the purposes therein provided, and it follows that the claim of the State to any of such lands under the swamp grant is inconsistent with said act. 22-388

28. The status of the Seminole Indians, as occupants of public lands in the State of Florida, is too indefinite in character to receive recognition in patents issued under the swamp grant. 26-117

29. Issuance inadvertently of patent under the grant defeats confirmation of sale as provided by act of March 2, 1855. 8-621

30. The original grant of, not enlarged by the act of March 3, 1857. 10-393

31. Excepted from the grant by reason of previous reservation to the Government are not confirmed to the State by the act of March 3, 1857. 10-393, 394

32. As the erroneous certifications based on the original surveys had been corrected on, the evidence of the resurveys prior to enactment of the confirmatory act of 1857, it follows that the original selections were not confirmed by said act. 7-514

33. Land disposed of by the Government prior to approval of State selection not granted (Oregon). 1-515

34. Included within the alternate sections reserved to the United States from the grant to the State for railroad purposes did not pass under the subsequent swamp grant. 4-2; 10-393; 14-229; 28-239

35. Included within the alternate sections reserved to the United States from the grant to the State (Ohio) for canal purposes did not pass under the subsequent swamp grant, and no indemnity can be allowed therefor. 10-394; 24-522

36. Grant of, not defeated by location of private claim where such action is not definite. 14-674

37. Claim for, not considered where the land has been certified to the State under railroad grant. 1-509

38. A claim of the State under the swamp grant will not be recognized where the lands embraced therein have been certified to the State under other grants, and such certification has been accepted

by the State and stood unquestioned for many years. 10-465; 26-685; 28-455

39. Where lands are patented to a State for the use of a railroad company, and the patent is accepted, the State is thereafter precluded from claiming any of said lands under the swamp grant, as against a purchaser under the act of March 3, 1887, whose purchase was made in good faith while the title was in the trustee for the benefit of the vendor. 29-321

40. If a tract of land was swamp and overflowed and unfit for cultivation at the date of the swamp-land grant to a State, such grant was a disposition of the land that excepted it from the operation of a subsequent grant to a railroad, even though no selection thereof was made by the State until after the attachment of rights under the railroad grant. 30-312

41. The State by securing title to lands under the wagon-road grant of July 5, 1866, is estopped from subsequently claiming the same lands under the prior grant of. 25-10

42. Where a State, during the pendency of its appeal from the adverse action of the local office on a swamp-land claim, selects the tracts involved in said claim under other State grants, and such selections are approved, the action of the State in making such selections must be held a waiver of its claims under the swamp grant. 26-94

43. The department is without jurisdiction to order a hearing, on the application of a State, to determine the character of lands claimed by it under the swamp grant, where, prior to any such claim, the lands have been certified or patented to the State for the benefit of a railroad grant. 25-417

44. A homestead entry of land subject to selection by a State under its grant of swamp and overflowed lands, made subsequent to the grant to the State, does not exclude the land embraced therein from the operation of the grant. 32-421

45. A settlement or filing under the pre-emption law, or both such settlement and filing, do not constitute a sale or disposal of the lands covered thereby, within the meaning of the act of March 12, 1860, extending to the State of Oregon the swamp

act of September 28, 1850, so as to except such lands from the swamp-land grant.

32-54

46. Lands claimed by the State under the swamp grant, and embraced in a pre-emption entry regularly perfected prior to the confirmation of title in the State, are excepted from the grant to the State. (See 33-101.)

32-54

47. Lands which have been finally adjudged by the Land Department to be of the character granted to the State by the act of March 12, 1860, and to have passed to the State under said grant, are not thereafter subject to other disposition.

33-101

II. Selection.

48. Selection of record withdraws the land from entry or location (Louisiana).

1-513

49. A *prima facie* valid claim under the swamp grant reserves the land covered thereby from sale or other disposition.

8-644; 11-157; 15-121

50. An application to select while pending segregates the land from other location, entry, or disposal.

32-124

51. A selection of, protects the interest of the State under the grant.

9-360

52. Pending the consideration of the State's claim entries may not but filings may be made.

2-641

53. Selected and reported as such prior to date of railroad grant are excluded therefrom whether swampy or not (Louisiana).

1-509

54. Character of selection properly a subject of investigation.

9-364

55. The right to contest selection of, is recognized as an aid in determining the true character of the land.

4-497;

5-31; 12-64

56. Selections of, should not be contested during the pendency of Government proceedings.

13-259

57. Contest against a selection of, should only be allowed on *prima facie* showing that the land is not of the character granted.

13-259

58. Until the legal title passes to the State, by the issuance of patent, the authority of the Land Department to inquire into the validity of a claim under a swamp

grant does not terminate; and in the exercise of such authority the Secretary of the Interior may properly revoke his approval of swamp-land selections.

28-390

59. Selections previously made and reported confirmed by the act of March 3, 1857, so far as the same were vacant and unappropriated.

1-508, 509;

5-516; 10-45, 163; 19-223

60. A list of selections finally rejected prior to the act of March 3, 1857, is not confirmed by said act.

8-387

61. The act of March 3, 1857, did not confirm a certified list of swamp selections based on an erroneous survey, where, prior to the passage of said act, the certification had been corrected on evidence furnished by a resurvey.

26-498

62. The act of March 3, 1857, did not confirm, to the State where the grant had been adjusted as to any particular township, or townships, and such adjustment had become final and conclusive by the acceptance, on the part of the State, of a patent for the lands covered by such adjustment.

26-182

63. A list of swamp-land selections filed by the surveyor general if not based upon proper data may be corrected by such officer through the filing of a second list, and thereafter the first list is not a pending list of swamp-land selections upon which the confirmatory provisions of the act of March 3, 1857, will operate.

30-271

64. A cash entry of land claimed under the swamp grant, made after the passage of the act of March 2, 1855, and prior to the act of March 3, 1857, should be passed to patent under the terms of said acts, as against approved; but unpatented, swamp-land selections, the State not having, within 90 days after the passage of the former act, reported any sale or disposition of said tract.

28-559

65. The failure of the State (Iowa) to include a tract (platted as a lake) in the list of selections did not release the title, which passed to her by a grant *in present*.

2-546

66. The failure of the State (Oregon) to make its selection within the time named in the grant does not defeat its title to lands of the character contemplated by said grant.

21-242, 279

67. The failure of the State to select a tract as, that is returned as agricultural, within the two years after survey, will be held sufficient to preclude the subsequent assertion of such right in the presence of an intervening adverse claim.

23-305

68. The right of the State (Louisiana) to swamp lands other than those heretofore selected, which are not otherwise appropriated, can not be abridged by a subsequent survey.

2-654

69. Selections (Louisiana) made after the location of a private land claim and approved subject to all valid objections passed no title unless it should be found on final adjudication that some of them are not required to satisfy the confirmation.

2-393

70. Certain selections (Louisiana) having been made within the claimed limits of a confirmed private grant (Houmas) since survey was extended over part of it, but before its boundaries have been determined, should, together with the survey, be canceled.

2-651

71. Directions given that the governor of Oregon be notified of all surveys that have been or may hereafter be completed and confirmed within the Klamath Indian Reservation, and that the Indian Office be notified of any selections made by the State of swamp lands within said reservation.

30-395

III. Indemnity.

See SCRIP, 97-99, 132.

72. Indemnity for, may be adjusted upon field notes.

3-572

73. On claim for indemnity the alleged basis may be reexamined in the field.

5-236; 19-126

74. In the examination of indemnity claims the testimony of the witnesses should accompany the report of the agent, but in the absence of any regulation to such effect, the failure of the agent to send in the proofs with his report should not in itself invalidate proofs taken in his presence.

19-581

75. All testimony in support of indemnity claims should be taken in the presence of the agent, who should also be

present when the proof is signed and sworn to.

19-581

76. Basis for indemnity must appear to be land of the character granted.

5-638

77. The swampy character of land forming the basis of a claim for indemnity should be shown in the same way, and by evidence of the same character, as required to entitle the State to lands under its grant.

24-231

78. The State (Michigan) not entitled to indemnity for lands that do not appear from the field notes of survey to be swamp land within the true intent of the grant.

7-243

79. Cash indemnity may be allowed for swamp lands sold between September 28, 1850, and March 3, 1857.

3-571, 583

80. The State (Louisiana) is entitled to indemnity for lands sold between March 2, 1849, and September 28, 1850.

5-464

81. The State of Louisiana is entitled to the benefits of section 2482, R. S., granting indemnity for lands disposed of after the act of 1850 and prior to that of 1857.

3-396

82. The State of Louisiana is not included within the indemnity provisions made by the act of March 2, 1855, for said provisions were specifically limited to States included in the general act.

24-231

83. The State of Louisiana is entitled to the benefit of the indemnity provisions of the acts of 1855 and 1857.

26-5

84. Swamp-land indemnity locations under the act of March 2, 1855, can only be made upon "public lands subject to entry at one dollar and a quarter per acre, or less."

32-197

85. Indemnity locations limited to the State in which the original selections were situated.

1-504; 4-2

86. Claim of Illinois for indemnity outside of the State is *res judicata*.

1-504

87. The claim of the State (Illinois) for indemnity for lands located with scrip or warrants may be adjusted.

10-125

88. The provisions in the act of April 18, 1818, making donation to the State of Illinois of 5 per cent of the net proceeds of the sale of public lands therein, is a direct appropriation for the specific purposes named in the act and can not be made the basis of a charge against the State or of

a set-off against its claim to swamp-land indemnity. 30-128

89. Grant of, did not take effect on lands reserved to the Government in reimbursement of lands granted by previous legislation, and, as such lands were not granted, indemnity therefor must be denied. 6-348

90. If located by warrant or scrip, section 2482, R. S., does not provide for cash indemnity. 10-446

91. When the State (Missouri) has completed any part of its indemnity proofs they are to be filed in the local office and duly certified and forwarded to the General Land Office. 2-644

92. When the State files a list of indemnity selections it signifies thereby its readiness to have its claim adjusted in accordance with existing regulations, and should not thereafter be heard to allege that its claim was considered before final proof was furnished. 10-121

93. The character of all tracts on which proof is submitted for indemnity should be determined, but separate lists should be made of tracts sold for cash and those located with land warrants or scrip. 10-121

94. Action on an indemnity list, in which the claim as to some of the tracts is allowed, amounts to a rejection of the claim as to the remainder. 24-231

95. A claim for indemnity must be rejected where it appears that the tracts of land employed as a basis therefor are included within a prior waiver of all claims thereto executed by a duly authorized agent of the county. 23-184

96. Selection by the State of indemnity school lands in lieu of lands claimed to have been lost in place because covered by a lake, precludes the State from claiming the lands in place under the swamp grant, but in nowise affects the right of the State to claim any other lands in the same township as swamp lands. 32-54

97. No limitations are imposed as to the time within which the claim of a State for swamp-land indemnity may be presented, aside from those contained in the instructions of September 19, 1891, and claims pending at the date of those instructions should not be rejected on the ground that they are stale. 30-128

IV. Character of Land.

98. Determination of the department as to the character of land conclusive. 4-549; 5-33

99. The Secretary has the power, and it is his duty, to determine what lands were of the description granted. 2-668

100. The claim of the State to swamp land depends upon the character of the land at the date of the grant. 3-468, 476; 14-247, 254; 21-537; 24-68; 28-318

101. The classification of land as swamp and overflowed that is not at the present time of such character requires clear and convincing proof of its swampy condition at the date of the grant. 22-156

102. Proof that land is at present swamp and overflowed is not sufficient to overcome the adverse return of the surveyor general. 14-247

103. Evidence as to the character of land since the date of the swamp grant is competent as tending to show whether the land was in fact swamp and overflowed at the date of said grant. 26-477; 30-128

104. The grant of 1850 was for "all legal subdivisions the greater part of which is wet and unfit for cultivation"; when the character of the greater part of a legal subdivision has been ascertained by duly constituted authority the character of the whole of that subdivision is ascertained. 2-472, 644; 8-555; 9-386

105. If there is doubt as to the character of the land, the decision must be against the grantee. 5-514, 681

106. Grant of, includes lands so "wet" as to be rendered thereby unfit for cultivation. 9-124, 640; 13-344

107. Distinguished from "lands subject to periodical overflow." 5-37

108. A periodical overflow that subsides in time for cultivation does not render the land subject to the grant. 3-521; 10-321; 19-63

109. Land in a valley subject to overflow annually in the spring and fall, caused by melting snow and rains, but which afterwards is fit for plowing or cultivation or hay growing, is not swamp land. 2-651; 10-321

110. Lands can not be properly classed within the swamp grant that are subject to annual overflow, but are made thereby

fit for cultivation, and without which crops can only be raised by irrigation.

21-256

111. Valley land subject to such annual overflow that the native grass growing thereon can not be harvested without diverting the water therefrom is within the terms of the grant.

13-341

112. A claim should be rejected where the evidence shows that the chief value of the land will be destroyed by artificial drainage and that the State does not intend to drain the land.

15-428

113. Lands returned as swamp and overflowed without the words "made unfit thereby for cultivation" pass under the grant where the survey is made subsequently thereto.

5-514

114. The approved formula "swamp and overflowed lands unfit for cultivation" employed in the returns of the surveyor general follows the words of the statute, and must be taken as sufficiently indicating the character of the land, without the additional statement that the lands were swamp and overflowed at the date of the swamp grant.

23-230

115. Under the grant of, it is the duty of the Secretary of the Interior to determine what are "swamp and overflowed lands made unfit thereby for cultivation," and therefore subject to the grant.

28-390

116. The duty of identifying the lands passing to the State of Louisiana under the swamp grants of March 2, 1849, and September 28, 1850, devolves upon the Secretary of the Interior for the time being, and it is within the power of that officer to resort to such plan of identification as seems to him best calculated to secure a proper adjustment of said grants.

32-270

117. A tract of land having been found by the Land Department to be "swamp by field notes," its character will not be again inquired into except upon a clear and direct averment of the insufficiency of the evidence in the field notes to support the finding.

32-124

118. Land at the date of the grant which was unfit for cultivation by reason of its wet or swampy condition is of the character contemplated by the grant.

10-121

119. Land that can not be cultivated to agricultural crops falls within the terms of the grant.

12-278

120. Lands occupied and cultivated by Indians can not be held as of the character contemplated by said grant.

26-118

121. Survey made in 1880, showing certain lands in California as all swamp when part had become dry since 1850, approved.

1-312, 320

122. The grant of, included such lands as were from their wet and swampy condition not cultivable without artificial drainage.

10-315

123. Whether lands are swamp or overflowed is a question of fact of which the field notes on the plats are not conclusive evidence.

2-849

124. If at the date of the grant a tract was covered with water of apparent permanent character, it would not pass under the grant though by subsequent recession of the water land of swampy character came into existence.

1-321

125. The act of the surveyor in meandering lands as a lake, which are not in fact covered by a permanent body of water, even though approved by the Land Department does not conclusively establish the character of the area beyond the meander line as a lake or exclude lands within that area from the swamp-land grant.

32-54

126. A meandered lake which was at date of the grant covered by shallow water, mainly from surface drainings, was entirely dry in 1842 and again in 1850, and was largely drained by the county in 1864, passed to the State (Iowa) by the grant.

2-544

127. Land covered by navigable waters of the State is not.

4-416

128. Land covered by an apparently permanent body of water at date of the grant is not of the character granted.

14-253; 17-571; 21-397; 26-605

129. The effect of the decision in the case of *Morrow et al. v. State of Oregon et al.* (17 L. D., 571) was to cancel swamp lists 30 and 31 and to annul all claims of the State and its alleged assignees to all of the tracts therein described for the reason that said lands were, at the date of the grant, covered by an apparently permanent body of water.

23-178

130. The claim of the State for lands included within the meander line of a lake, where it appears by subsequent official survey and investigation that such line was not properly established, and in fact included lands of the character granted, should be recognized. 21-184

131. A relinquishment by the proper officers of a State, of lands included in an approved swamp-land list, on the ground that said lands are not of the character contemplated by the swamp-land grant to the State, will be accepted as sufficient authority for canceling, upon the records of the Land Department, the certification to the State of the lands in question. 30-109

132. Any question as to the character of lands claimed by the State under the swamp-land act of September 28, 1850, which lands are covered by patents issued prior to any claim thereto by the State, is subject to inquiry only in the courts and by judicial proceedings. 30-626

133. The swamp-land grant of September 28, 1850, is not in terms confined to lands subject to the overflow of large streams, but includes "the whole of those swamp and overflowed lands, made thereby unfit for cultivation, which shall remain unsold at the passage of this act"; thus making the condition of the land, from whatever cause, the criterion in determining whether it falls within the words of the act descriptive of the character of the land granted. 32-54

134. Where it is not clearly shown by the field notes of survey that a tract of land was at the date of survey swamp land, and the State has never made formal claim to such tract under the swamp-land grant, although lists of lands selected as swamp and overflowed within the township where the tract is located were filed many years ago, and it is shown by the testimony adduced at a hearing had on a contest involving the character of the land that such tract is not swamp land, the markings upon the plat of survey showing the extension of a swamp within the section, not based upon an actual survey, but upon a casual observation of the land and deduction from the conditions shown along the survey line, will not be deemed sufficient to establish the character of the

land as swamp and overflowed within the meaning of the act of September 28, 1850. 33-56

V. Adjustment.

135. Circular of December 13, 1886, with respect to entries and filings on lands claimed by the State. 5-279

136. Rules and regulations of September 19, 1891, adopted for the presentation and adjustment of claims. 13-301

137. Act of February 17, 1897, making provision for sale and entry of lands embraced in Mississippi list No. 7; circular of March 22, 1897. 24-267

138. Before final action is taken on a claim the waiver as to further claims required by the regulations of September 19, 1891, must be furnished. 14-533

139. The State will be held to have waived its claim where the special agent notes the claim as abandoned in his report, and such action appears to have been in accordance with the intention of the State at the time. 18-273

140. The State will not be heard to say that a decision on a claim for swamp indemnity is rendered without due notice that the claim "would be adjudicated in its then condition" where said State has waived its claim to a part of the lands, and repeatedly thereafter requested final action on the remainder. 19-126

141. The claim of the State, while pending on adjustment, should not be considered as "waived" in the absence of a formal waiver filed with the record. 11-228

142. A waiver of the State's right to submit testimony in support of its claim by one authorized to examine witnesses on behalf of the State is conclusive in such matter as against the State, and it will not be heard to say thereafter that it had no opportunity to offer such testimony. 12-276

143. The State is concluded from asserting a claim under selection, where it fails to protest or ask for a hearing, after due notice from a homestead claimant who submits proof establishing his allegation that the land is not of the character granted to the State. 19-180; 21-256

144. The circular of December 13, 1886, requiring the State, after due notice, to present its objections to the allowance of entries of lands theretofore selected, is not applicable to a case wherein a hearing to determine the character of the land was ordered prior to the issuance of said circular and such hearing has not been held in pursuance of said order. 22-168

145. Cases should be disposed of in accordance with the general rules of practice (Oregon). 4-225

146. The Commissioner of the General Land Office to determine whether the evidence as to the character of the land is satisfactory, and, if not so found, may order reexamination in the field. 5-236

147. The commissioner must review the proceedings in the local office, whether an appeal is taken therefrom or not. 3-474, 608; 4-226; 13-341; 21-279

148. Right of the State to be heard before the department on the final adjudication of a claim recognized, though appeal was not taken from the adverse decision of the local office. 8-64

149. The failure of the State to appeal from an adverse decision of the General Land Office as to the character of a tract of land is conclusive as to the rights of the State and parties claiming thereunder who had not disclosed their interest. 18-555

150. Persons who derive title through the State have a right to be heard and make any objection to the allowance of an entry thereof that might have been made by the State had it not parted with its claim. 22-372

151. As between a homestead claimant and a transferee of the State under the swamp grant, a decision of the local office that the land is in fact not of the character granted should not be disturbed in the absence of appeal, where prior to the acquisition of the transferee's title the selection of the State had been finally rejected. 22-440

152. When proof has been submitted by the State in accordance with the regulations then in force the General Land Office should render judgment thereon if found sufficient, and, if not, direct further investigation. 10-121

153. Where the State presents its claim upon evidence alleged by its agent to be of the best and highest character obtainable, and such evidence, on investigation, is found unreliable, the case must rest on the record as made. 19-126

154. The ascertainment of the tracts granted is a question of fact to be settled by the Secretary of the Interior. 7-514

155. In adjudicating claims for, the State alone is recognized as the beneficiary, and not counties. 10-121

156. The manner of collecting evidence in the adjustment of the swamp grant not material. 3-440

157. Plan of adjustment may be varied by the Secretary of the Interior. 5-31, 236, 519

158. The grant of, may not be enlarged by any plan of adjustment. 7-514

159. An agreed plan of selection of swamp lands may be modified by the State with the consent of the United States. 3-334

160. The decision of a commission mutually agreed upon that a certain tract is swamp land will not prevent the department from reviewing such decision or considering other evidence. 8-555; 9-385; 10-39

161. Though the State elected to furnish evidence, the Department may consult its records where the evidence is conflicting. 3-476

162. To establish the claim of the State it must show that the greater part of the subdivision claimed is of the character granted. 8-555; 9-386

163. A certificate of the surveyor general that lands within a specified list are of the character granted is *prima facie* evidence as to the character of such lands at the date of the grant (Iowa). 13-344

164. Government may institute inquiry as to the character of the land claimed. 4-497

165. The history of procedure by the Land Department in the adjustment of the grants of March 2, 1849, and September 28, 1850, reviewed and specific instructions given for a speedy final adjustment thereof. 32-270

166. State may submit proof in the absence of agreement to accept the field notes as the basis of adjustment. 5-548

167. Acceptance of the field notes as the basis of adjustment makes them *prima facie* evidence as to character of land.

4-481

168. Under adjustment by field notes the character of the land must be clearly apparent.

5-514, 638

169. The field notes of survey are presumptively correct and must be taken as true until disproved by a clear preponderance of the evidence.

7-562

170. In the absence of an affirmative showing that a tract of land was swamp in character at the date of the grant, the Department will not order a hearing to determine its character, where by the field notes of survey it is returned as agricultural land.

23 305

171. Where the State accepts the field notes of survey as the basis of adjustment, and from such evidence a selection is duly made, the Department will not cancel the same in the absence of convincing proof of fraud or mistake in the survey.

21-537

172. The burden of proof is with the State if the returns do not *prima facie* show the swampy character of the land.

8 555; 9-386; 13-341;

14-247; 19-126; 26-477

173. Departmental approval of a survey of lands does not conclusively fix the character of the lands with regard to the swamp grant, but has the effect of *prima facie* establishing their character as returned by the survey; and in case of the selection by the State of lands not returned as swampy in character, the burden is upon the State to show that they are of the class granted.

30-120

174. The field notes of a survey made prior to the swamp-land grant are of but little weight in determining the character of the land; but where the State has elected to make the selection of swamp lands by its own agents in the field, the burden is upon it to show that the lands selected are of the character contemplated by the grant, if the field notes show otherwise.

30-128

175. The correctness of an official report as to what is shown by the field notes will be presumed in the absence of evidence to the contrary.

9-458

176. Field notes of survey not conclusive except when showing the character of each smallest legal subdivision.

5-681

176½. Election of the State of Ohio to rely on field notes of survey recognized.

3-390

177. In adjusting the grant on field notes of survey, where the intersections of the lines of swamp lands with those of the public survey alone are given, such intersections may be connected by straight lines to determine the character of the legal subdivisions.

7-424; 9-385

178. In adjustment under field notes of survey made before the grant the State is not entitled to lands returned as swamp and overflowed without all the descriptive words of the grant or words clearly of like import.

5-514;

9-458; 13-117; 15-73

179. If the survey is made before the grant and the field notes do not clearly show the land to be swamp, the claim of the State thereto on the field notes will not preclude a hearing to determine the true character of the land.

16-90

180. Where the field notes of survey are made after the passage of the act of 1849, and with reference thereto, they will be held to entitle the State, *prima facie*, to lands returned as swamp and overflowed without the additional words "made unfit thereby for cultivation."

5-514

181. If the field notes of the original survey, made prior to the grant, fail to disclose the real character of the land, and a resurvey, made after said grant, and with reference thereto, shows said land to be in fact swamp, the State, relying on the Government survey, is entitled to file its supplemental list, with assurance of approval.

19-223

182. In a case arising between a homesteader and a State claiming under the swamp grant, a hearing may be properly ordered to determine the character of the land, where the said grant is adjusted on the field notes of survey, but the survey having been made prior to the grant, furnishes no satisfactory evidence as to the actual character of the land.

26-99

183. Field notes of survey made after the grant presumed to show whether the

land is subject thereto. No such presumption attends survey made before the grant (Louisiana). 5-514, 638

184. The falsity of the field notes of survey may be shown by a party in interest without requiring him to also show that the survey was fraudulent. 7-562

185. That the returns do not show the land to be of the character granted is not conclusive against the State even though the field notes of survey have been adopted as the basis of adjustment. 10-39

186. Election of the State (Louisiana) to rely on the field notes accepted as basis of adjustment. 5-598

187. The State having elected to take, by the field notes of survey is bound by them, as is also the Government (Louisiana). 4-525

188. To pass by field notes, the description therein must be specific and show the lands to be of the character granted. 4-524; 5-514, 638

189. Grant should be adjusted on field notes of survey in General Land Office (Arkansas). 4-295

190. Until the governor is invested with authority to consent to the adjustment of the grant in accordance with principles heretofore adopted by the department no further action can be taken on the claim of the State (Arkansas). 5-636

191. State bound by its election to adjust the grant on the field notes unless the survey is shown to be fraudulent. 4-480

192. Where the field notes of the survey of a township have been made the basis of a final adjustment of the swamp grant, and the State has accepted a patent thereunder, it is estopped, while holding the lands so conveyed, from claiming additional tracts under a resurvey which also shows that a portion of the lands patented were not of the character granted. 26-182

193. Though the field notes may show the land to be of the character granted, it will not pass to the State if the falsity of the returns is shown. 4-479; 5-519; 8-179

194. The field notes of survey are *prima facie* evidence of the character of land; but it is always competent for any adverse claimant under the public-land laws to assail the correctness of the returns. 18-323

195. The adoption of the field notes of survey as the basis of adjustment will not estop the Government from making inquiry as to the character of a tract although it may appear from the field notes to be of the character granted (Minnesota). 7-313, 562

196. The election of the State to be governed by the field notes will not preclude the allowance of a hearing to determine the character of tracts claimed under the grant but not shown to be swamp by the field notes. 13-736

197. The field notes of survey having been accepted by the State as the basis of the adjustment of the swamp grant, the character of land for which the State asks indemnity may be determined thereby, except where a direct issue is made, in which case an investigation may be ordered and the character of the land determined on the evidence so submitted. 26-5

198. Where the State has elected to take under the field notes a hearing will not be ordered on the application of the State to determine the character of a tract, except on *prima facie* showing that the land is of the character granted. 13-736

199. The State may show by evidence outside of the field notes that the land claimed is swamp or overflowed. 13-117

200. In the adjustment of the grant on field notes of survey the report of a State locating agent can not be accepted as showing the swampy character of a tract not so shown by the field notes; nor can a certificate of the surveyor general based on such report be considered. 16-90

201. Circular of April 4, 1903, relative to adjustment of swamp land grants to State of Minnesota. 32-88

202. Circular of March 12, 1904, construing paragraph one (1) of circular of April 4, 1903. 32-199

203. In the adjustment of the swamp land grant to the State of Minnesota all existing contests and controversies between the State and an actual and *bona fide* homestead or preemption settler, whether the settlement was made before or after the survey, will be disposed of under the rule announced in the Lachance

decision, that being the rule under which the settlement was effected and the contest or controversy begun. 32-65

204. All existing contests or controversies in which there is no claim of actual and *bona fide* homestead or preemption settlement will be disposed of under the original plan of following the field notes, there being nothing in such contests or controversies which would equitably entitle the claimants adverse to the State to have the contest disposed of under the rule announced in the Lachance decision. 32-65

205. All contests or controversies hereafter begun respecting the swampy or non-swampy character of lands in Minnesota, whether heretofore or hereafter surveyed, must be determined by the field notes of the survey. 32-65

206. No contest or controversy which has heretofore been carried to a hearing and decision will be in any manner disturbed or affected by these directions. 32-65

207. Where there are two or more surveys of the same lands, that survey which has been finally approved and which is recognized as the existing or subsisting official survey is the one to the field notes of which alone attention will be given hereunder; and, swamp land being generally the exception and not the rule throughout the public-land States having a swamp land grant, and it being the practice in public surveys to make special notation of the swamp lands rather than of the dry or nonswampy lands, the silence of the field notes and surveyor's return respecting the character of the land will be treated as equivalent to a statement that the land is dry or not swampy. 32-65

208. Report to the President of the United States relative to departmental decision of March 16, 1903, prescribing certain rules governing the adjustment of the grant of swamp and overflowed lands made to the State of Minnesota by the act of March 12, 1860. 32-531

209. The rule adopted by the Land Department, that all contests or controversies thereafter begun, respecting the swampy or nonswampy character of lands in Minnesota, must be determined by the

field notes of survey, does not inhibit an examination in the field as to the swampy or nonswampy character of lands shown by the field notes to be swamp and overflowed, for the purpose of determining the truth of allegations that the field notes are false and fraudulent or grossly incorrect. 32-497

210. A contest against the selection of a tract of land by the State of Minnesota under the swamp-land grant, initiated by one having no claim of actual and *bona fide* homestead or preemption settlement, in which a hearing was had prior to the decision of the Department of March 16, 1903, relating to the adjustment of said grant, but the testimony of one of the witnesses examined at said hearing had not at that date been signed, is not one which has been "carried to a hearing and decision," within the meaning of paragraph numbered 5 in said decision, and for that reason excepted from the operation of said decision, but comes within the direction contained in paragraph 2 thereof, and must be disposed of, according to the showing made, by the field notes of survey. 32-593

211. The swamp-land grant to the State of Minnesota being a grant *in præsentia* of all land of specific character in place, and the field notes having been accepted by both the State and the Government as the evidence by which their rights shall be adjusted, a third party will not be allowed to question an adjustment satisfactory to the parties themselves. 32-124

212. In order to bring a case within the exception named in paragraph 1 of the departmental regulations of March 16, 1903, providing for the adjustment of the swamp-land grant in the State of Minnesota, it is necessary to show that it involves an actual *bona fide* settlement claim, which can not be done without proof of residence actually begun upon the land. 33-27

213. Where the field notes of survey are the basis of adjustment of the swamp-land grant to a State, and the intersections of the lines of swamp or overflow with those of the public surveys alone are given, those intersections may be connected by straight lines; and all legal subdivisions, the greater part of which are shown by

these lines to be within the swamp or overflow, will be certified to the State; the balance will remain the property of the Government. 33-47

214. Where only one line is intersected by swamp, or for any other reason the above rule can not be applied in the adjustment, the plats of survey may be used to supplement the field notes, but they are referred to only in such cases, and in no case can they be considered as overcoming or controlling the field notes of survey. 33-47

215. Where swamp is disclosed only upon one of the surveyed lines of a section, thus rendering the application of the rule of adjustment laid down in First Lester, page 543, impossible, the State's claim under its swamp-land grant should be adjudged by the portions of the surveyed line shown to be swamp and dry—if the greater part be swamp the tract will pass to the State, and if the greater part be dry it will remain the property of the Government. 33-475

216. The rule announced in departmental decision of March 20, 1905, in the case of *Wallace v. State of Minnesota* (33 L. D., 475), relative to the adjustment of swamp-land grants where swamp is disclosed only on one of the surveyed lines of a section, vacated, without prejudice to the right of the State to make further showing with respect to the matter, if it so desires, and instructions given that, for the present, the rule laid down in First Lester, page 543, alone be followed. 33-616

217. In the adjustment of all claims for public lands in the State of Minnesota initiated in accordance with law prior to survey of the lands, in instances where selection thereof is made by the State under its swamp-land grant, and the field notes of survey afford a sufficient basis for such selection, the Land Department will, by hearing or otherwise, determine the true character of the lands, notwithstanding the return of the field notes of survey of the township. (See 34-151.) 34-22

218. In the adjustment of all claims resting on a selection or exchange of lands, presented in accordance with law for public lands in the State of Minnesota, prior to survey thereof, the Land Department

will, by hearing or otherwise, determine the true character of the lands selected, if claim is presented thereto on behalf of the State under its swamp-land grant, based upon the field notes of survey, notwithstanding the return of the field notes of survey of the township may afford a sufficient base for the State's claim. 34-151

219. Where a claim is asserted to public lands in the State of Minnesota based upon settlement made prior to survey, and the lands upon survey are returned as swamp and overflowed and are claimed by the State under its swamp-land grant, the settler will be accorded opportunity to show the true character of the lands by evidence other than the field notes of survey. 35-58

220. Where the right of the State of Minnesota under its swamp-land grant, to lands shown by the field notes of survey to be swamp and overflowed, is questioned by one claiming settlement thereon prior to survey, the burden is upon the settler to apply for a hearing and show that the lands are not of the character contemplated by the grant; and until he shall have assumed such burden and established his case he should not be permitted to make entry of the land. 37-385

221. Directions given that hearings be not had in such cases until after 60 days' notice to the State. 37-385

222. One who at any time prior to the official filing of the plat of survey settles upon lands shown by the field notes to be swamp and overflowed, and claimed by the State of Minnesota under its swamp-land grant, is entitled to apply for a hearing and have his claim adjusted upon evidence as to the true character of the land. 37-390

223. General charges made in a contest involving a particular tract claimed by the State of Minnesota under its swamp-land grant, affecting the character of the Government survey, are not sufficient to take the case out of the scope of the instructions of March 16, 1903 (32 L. D., 65), governing the adjustment of said grant. 35-328

224. The rule laid down in the departmental decision of November 26, 1906 (35 L. D., 326), as supplemental to the rule

in First Lester, 543, governing the adjustment of swamp-land grants, has no application except in instances where the rule in First Lester is inapplicable, nor should it be applied to the disadvantage of persons who made settlement prior to the promulgation of said rule. 35-469

225. Where sketch maps are returned with the field notes of survey, and the field notes show intersections of swamp and overflowed lands with *one* line of a section only, the sketch maps will be taken into consideration in determining the character of the portion of the section lying upon the surveyed line, with reference to its swampy or nonswampy character; and in such instances, where the outline of the swamp or overflowed lands is shown by the diagram to extend from the section line 15 chains or more within the section, the adjustment will be made upon the basis of the relative portions of the surveyed line shown to be swamp or dry by the field notes of survey. If the diagram shows that the swamp or overflow thereby represented extends at any point 15 chains or more across the section line, and within the section, the State will be entitled to such 40-acre subdivisions lying upon the section line as are shown by the field notes of the major portion of said line to be of the character granted; but this rule shall have no application in the adjustment of a claim to the *interior* 40-acre subdivisions of a section. 35-326

226. While sketch maps returned with the field notes of survey may be properly considered in connection with the field notes in determining whether or not the lands are swamp and overflowed under the rules adopted for the adjustment of the swamp-land grant to the State of Minnesota, such maps, standing alone, can not be considered of special importance in determining that question. 37-375

227. The treaties of May 7, 1864, and March 19, 1867, by which a reservation was provided for the Chippewa Indians, were not made pursuant to any law enacted prior to the act of March 12, 1860, making a grant of swamp lands to the State of Minnesota, and hence lands of the character granted lying within said reser-

vation were not thereby excluded from the operation of the grant. 37-397

228. The fact that the State of Minnesota, by virtue of the treaties of 1864 and 1867, may have acquired title to certain lands within the area ceded to the United States by the Chippewa Indians, which would not have accrued to the State in the absence of such treaties or other similar proceedings, in no wise affects the right of the State under its swamp-land grant to the lands previously granted to it within the area set aside for the Indians by said treaties. 37-397

229. The provision in section 2 of the swamp-land grant to the State of Minnesota that the selection of surveyed lands shall be made within two years from the adjournment of the legislature of the State at its next session after the date of the act, and as to unsurveyed lands within two years from such adjournment after notice by the Secretary of the Interior to the governor of the State that the surveys have been completed and confirmed, is not a condition or limitation of the grant, but merely a direction to the Secretary of the interior. 37-397

230. Under the rule of evidence adopted for the adjustment of the swamp grant to the State of Minnesota the field notes of survey as a rule govern in determining the character of land claimed by the State under its grant; but where in a controversy between the State and one claiming adversely by virtue of settlement prior to survey, the return of the surveyor showing the land to be swamp is overcome by evidence adduced at a hearing to determine its true character, the State's claim under its grant can in no event be allowed, regardless of the final disposition that may be made of the adverse claim. 38-284

231. The adoption of the field notes of survey as the basis of adjustment did not amount to a contract with the State (Michigan and Minnesota). 7-514, 562

232. The "notes of surveys on file" must be interpreted as meaning, the notes finally approved (Michigan). 7-514

233. Passed to the State as such on field notes of survey though not selected (Michigan). 1-514

234. State to furnish evidence where the field notes are not conclusive (Michigan). 4-415

235. In the investigation of claims the proceedings of a special agent should be in accordance with departmental regulations. 11-222

236. An adverse finding and report by a special agent is not conclusive against the State in the absence of final testimony submitted by the State. 10-22

237. Claim should not be rejected on the report of a special agent, but a further investigation may be ordered thereon. 10-121; 14-175

238. In adjusting the grant of, sworn testimony of competent witnesses should not be ignored on a superficial examination in the field by a special agent. 9-124. 640

239. Concurrent report of the State and Government agents as to the swampy character of specific tracts at the date of the grant, based upon an investigation made by said agents in 1885, will not warrant favorable action by the department in the absence of evidence furnished by the State as to the character of each subdivision. 22-75

240. Specific charge that land was fraudulently returned will be investigated even after certification. 6-37

241. For fraud shown the returns may be attacked and vacated. 4-479; 5-519

242. In conflict with settlement claim should not be disposed of without notice to the settler. 5-99

243. Entry of, by preemption not evidence in itself of fraud. 4-549

244. The exception of settlement rights in the act of 1857 is not applicable to the State of Florida. 8-65

245. Claim of State to certain lands held by preemptors and homesteaders waived by act of legislature (Oregon). 4-549

246. Claim for lands acquired from the Mille Lac Indians by the treaty of 1864 (Minnesota) can not be adjusted until the "further legislation" required by the act of July 4, 1884, has been enacted. 5-102

247. The department has no jurisdiction to inquire into an allegation that a

certain tract is an accretion to other land and that passed under the swamp grant. 7-255

248. If patent for land has erroneously issued to individual grantees the remedy of the State is in the courts. 10-393

249. The department has no authority to enter into and determine controversies arising between adverse claimants for, under the statutes of a State. 21-212, 279

250. Under the grant of, the legal title passes only on delivery of the patent, and until such title passes from the Government inquiry as to all equitable rights involved in the adjustment of said grant comes within the cognizance of the Land Department. 28-558

VI. Unsurveyed Land.

251. Selections of unsurveyed lands by estimated areas may be patented if they can be designated by an accurate description (Florida). 8-65

252. It appearing that the unsurveyed body of lands lying within the State of Florida known as the Everglades is, and that a survey thereof is not practicable, patent may issue to the State, upon an estimated area designated by metes and bounds, the State to furnish a meander survey. 18-26, 19-251

253. A patent may issue to the State of Florida under the swamp land act for the unsurveyed tract known as the Everglades, subject to the right of the State under its grant of school lands. 24-117

254. Selections of unsurveyed lands made in accordance with existing regulations and reported prior to the act of March 3, 1857, held to be confirmed by said act. 8-65

255. Selections by estimated areas of unsurveyed lands permissible, in the absence of conflict with other claims if the entire body of land is of the character granted. 8-369

256. Selections of unsurveyed lands to be governed by the facts in each case. 8-369

VII. California.

257. The return of the surveyor general under the first clause of section 2488, conclusive except in case of fraud or mistake. 5-99

258. Adjudication under the fifth clause of section 2488, R. S., final as against a mere allegation that the lands were not of the character granted. 5-37

259. Under section 2488, R. S., the return of land as swamp and overflowed is conclusive evidence as to the character of the land so returned and represented on the township plat, and this provision is not defeated by the act of June 17, 1892, granting homestead rights in the Klamath River Indian Reservation. 24-26

260. Under the first paragraph of section 2488, R. S., the return of land as swamp and overflowed by the United States surveyor general for the State of California is conclusive evidence as to the character of the land so returned and represented as such on the approved township surveys and plats; and lands thus returned must be certified to the State as inuring thereto under the swamp grant. 23-230

261. Section 2488, R. S., relates to lands in California that were swamp at the date of the granting act. 1-312

262. Under section 2488, R. S., the surveyor general should describe the land that is swamp and overflowed according to the best evidence he can obtain. 1-324

263. Testimony as to the character of land submitted by the State under section 2488, R. S., must be taken before the surveyor general. 6-684

264. Where the State survey is not according to the rectangular system, amendment of the plats showing State swamp segregation is disapproved. 2-470

265. The real object of the desired amendment is to secure the designation of lot 1 as swamp land; in this case the plat must be so amended, as the greater part of the forty was returned as swamp. 2-471, 645

266. Segregation survey of, under State act of 1863, prior to application, is invalid. 4-371

267. Act of July 23, 1866, section 1, has no reference to swamp claims after patent thereunder to a purchaser from the State; it may not be again claimed under the swamp grant. 2-643; 4-142

268. Only the fourth section of the act of July 23, 1866, refers to swamp lands,

and under the first clause of said section the State has no right unless the land appears upon the approved township plat as swamp. 3-521

269. Segregation survey under third clause of section 4, act of July 23, 1866, approved by the surveyor general, is not conclusive. 3-492

270. The title to land sold and segregated by the State as swamp prior to the act of July 23, 1866, is confirmed in the State by the second clause of section 4 of said act if the segregation conforms to the "system of surveys" adopted by the United States. 11-37

271. The supervision of the Commissioner of the General Land Office in approving township plats showing segregation surveys made by the State prior to the act of 1866 is limited to determining whether said surveys conform to the "system of surveys" adopted by the United States. If fraud is alleged, the commissioner may refuse his approval. 11-37

272. The approval by the surveyor general of a segregation survey made under section 2488, R. S., is of no legal force where the lands covered thereby were not in existence at date of the grant. (See 23-230.) 14-253

273. Lands segregated by the State as swamp before the act of July 23, 1866, by surveys in conformity with the system adopted by the Government were confirmed to the State by said act. 8-78

274. Proof as to the character of land at date of the grant should be required before approving a contract for a segregation survey. (See 23-230.) 14-253

275. Land to which no claim has attached prior to survey, and which is represented as swamp on the approved township plat, inures to the State irrespective of the actual character of the land. 13-129

276. The act of July 23, 1866, and section 2488, R. S., changed the manner of identifying swamp lands and laid down a rule of evidence by which the character of land shown, by an approved survey made under the authority of the United States, to be swamp and overflowed is conclusively established. 30-570

277. The act of July 23, 1866, and section 2488, R. S., did not overthrow or restrict the authority of the Secretary of the Interior over surveys of the public lands, and whenever fraud or error exists in connection with the execution or acceptance of a survey he may prevent the disposition of public lands thereunder and take appropriate action to secure a correct survey. 30-570

278. Under the swamp-land grant of September 28, 1850, patent is necessary to pass the full legal title, and if by the act of July 23, 1866, and section 2488, R. S., certification is, as to the State, substituted for patent, until such certification the Land Department has jurisdiction to determine whether a tract of land is properly identified as passing under that grant. 30-570

279. In the absence of express provision in section 2488, R. S., the power of supervision lodged in the Commissioner of the General Land Office and the Secretary of the Interior by sections 441, 453, and 2478, R. S., extends to surveys in like manner as to other public land transactions. The Secretary is not bound to accept and recognize for any purpose a survey of the public lands in California or elsewhere where there is mistake or fraud in its execution or approval, even though the returns or notes accompanying it show a portion of the land embraced therein to be swamp and overflowed. 31-303

280. A purchaser of alleged swamp land after survey but before title had passed to the State under section 2488, R. S., takes it subject to the power of the Secretary of the Interior to reject the survey and to require that a correct survey be made. 31-303

281. Lands which at a hearing, upon application of the State under the act of July 23, 1866, are shown to have been, on September 28, 1850, the date of the swamp-land grant to the State, not of a permanently swampy character, but subject merely to periodical overflow and susceptible of cultivation on recession of the waters, were not swamp within the meaning of the swamp-land grant and did not pass to the State thereunder. 40-529

VIII. Certification.

282. The approval and certification of a list affirmatively determines the character of the lands embraced therein. 5 33, 300

283. Certification of, not disturbed except on showing of fraud or mistake or alleged priority of right. 5 31, 300; 6 87

284. When the field notes of survey show that land is swamp in character, and it is listed as such by the State, and the list approved, it will require positive evidence by witnesses thoroughly cognizant of the condition of the land at or near the date of the grant to justify revocation of the approval. 23 148

285. Until patent issues for lands claimed by the several States under the swamp-land grant of September 28, 1850, the United States has not been divested of the legal title, and until that time the Land Department has full jurisdiction over such lands, regardless of the fact that lists regularly submitted, and duly approved, have been transmitted to the proper officer of the State. 33-13

286. Where a land grant to a State or Territory does not convey the fee simple title to the lands granted, or require patents to be issued therefor, the title thereto does not pass until the approved list of selections of such lands has been certified to the State by the Commissioner of the General Land Office. 33-13

287. The department retains jurisdiction over, until the issuance of patent, and may revoke the approval and certification of lists when made upon a misapprehension of the facts. 12-565

288. The inadvertent certification of lands excepted from the grant does not deprive the department of jurisdiction to correct the error. 14-229; 26-118

289. State (Oregon) to show cause why certification procured through fraud should not be set aside. 5-374

290. Investigation as to manner of procuring certification authorized (Oregon). 5 300, 374

291. In the adjustment of the grant the Government is not bound by a certification procured through a false and fraudulent report of its agent, and the Secretary of

the Interior may cancel a certification thus procured. 7-572

292. The Secretary of the Interior is authorized to correct a certification based upon an erroneous survey. 7-514

293. If it is made to appear that lands have been erroneously included in a certified swamp-land list, and patent has not issued thereon, the action of a preceding Secretary of the Interior approving such list may be corrected by his successor. 26-117

294. Where swamp lands (32,102 acres) were improperly certified to the State (Minnesota) under a grant for a railroad (Lake Superior & Mississippi) and conveyed by the State to the company, upon a reconveyance to the State by the company or its successors patents may issue to the State under the swamp grant. 2-642

295. Although the lands may have been certified (1852) to the State (Louisiana) under a survey originally erroneous (as to character), as shown by a subsequent survey (1879), the certification was equivalent to patent, and the United States has no further ownership in or control over them until set aside by due course of law. 2-652

296. An order revoking the approval of a list embracing the lands in a specified county is ineffective as to a tract which for the major part lies outside of said county and was regularly selected. 27-494

297. A certified copy of the record of a swamp-land indemnity certificate may be issued in lieu of the original, where satisfactory proof of the loss thereof is furnished. 19-257

298. The issuance of patent upon entries embracing lands alleged by the State to have passed to it under its swamp-land grant terminates the jurisdiction of the Land Department thereover; and any question as to the character of the lands and whether the issuance of patent therefor was inadvertent will be inquired into only for the purpose of determining whether recommendations should be made for the institution of suit to set aside the patent. The question as to whether the issuance of patent amounted to an adjudication that said lands were not swamp,

and therefore did not pass to the State under its grant, is one for determination by the courts, and not by the Land Department. 34-246

TELEPHONE LINE.

See RIGHT OF WAY, II.

TENANT.

See RESIDENCE, 20-22; SETTLEMENT, 41-46; TOWN LOT, 55-59.

TIDE LANDS.

See ALASKAN LAND, 80; MINING CLAIM, 46; SCRIP, 34-35, 90; STATES AND TERRITORIES, 150.

TIMBER AND STONE ACT.

See ALIENATION, IX; APPLICATION, VIII; CONFIRMATION, 168-172; CONTEST, XV.

I. Generally.

II. Character of Land.

III. Publication.

IV. Adverse Claim.

I. Generally.

1. Circular of May 21, 1887. 6-114
2. Circular of September 5, 1889, revoking the 90-day requirement. 9-384
3. Circular of October 12, 1892, under the amendatory act of August 4, 1892, with copy of the act. 15-360
4. Regulations of November 30, 1908, under timber and stone act. 37-289
5. Regulations of November 30, 1908, revised August 22, 1911. 40-238
6. Paragraph 19 of the regulations of November 30, 1908, amended. 40-133
7. Instructions of March 17, 1911, modified. 40-131
8. Directions given respecting the form and manner of service of notice to make payment under the timber and stone act. 40-77
9. Circular of July 1, 1904, relative to suspension of applications to purchase lands in Yakima Indian Reservation under act of June 3, 1878. 33-83
10. The timber and stone act of June 3, 1878, which fixes merely the minimum

price at which lands are to be sold thereunder, sufficiently warrants appraisal and sale of lands thereunder at a higher rate.

39-449

11. Entry under, not included in the maximum amount of land that may be acquired under the limitation imposed by the act of August 30, 1890, as construed by the act of March 3, 1891. (See 33-539.)

19-299

12. An applicant for the right of timberland purchase must show that the land applied for is free from adverse occupancy and that he has made no other application to purchase under the timberland act.

24-360

13. Until an application is finally allowed the applicant has no right to or control over the land.

9-335

14. Right to receive title complete on proof and payment made in good faith.

5-38

15. The purchase money under the act of June 3, 1878, must be placed in the hands of the receiver at the time of the submission of final proof, and when so paid is in contemplation of law public money, subject to forfeiture under the provisions of section 2 of said act.

33-566

16. An applicant to purchase under the timber and stone act is entitled to 30 days from service of notice within which to make payment of the appraised price of the land.

40-77

17. The limitation of the right to purchase to "unoffered" lands is not removed or modified by the provisions of section 1, act of March 2, 1889.

19-381

18. Lands which have been offered, but withdrawn from private entry, by the act of March 2, 1889, are not subject to entry under, as amended by act of August 4, 1892.

16-326, 335

19. The withdrawal of offered lands in aid of a railroad grant abrogates the original offering, and brings them within the category of unoffered lands, and hence subject to timberland entry if restored to the public domain.

19-513; 22-96; 23-412

20. The right of entry under the act of June 3, 1878, and the act of August 4, 1892, amendatory thereof, does not extend to "offered lands," though the offering was made subsequent to the passage of the original act.

21-460

21. It was the intention of Congress under the provisions of the acts of June 3, 1878, and August 4, 1892, to except from purchase lands which belonged to the class of "offered" lands at the date of application to purchase the same.

20-129

22. A purchaser erroneously allowed to buy "offered" timberland takes nothing thereby; and if he cuts timber from such land is liable to the United States to the same extent as though the trespass had been committed upon any other part of the public domain.

28-163

23. Lands that have once been offered, subsequently raised in price, and not re-offered are of the class subject to entry under said act.

15-280

24. Authorizing entry of lands "which have not been offered at public sale according to law" includes lands that, at the date of the passage of said act, had not been offered at public auction at the price then fixed by law.

17-332; 19-381

25. Railroad lands restored to the public domain by the forfeiture act of September, 1890, are not subject to entry under the.

15-292

26. The water reserve lands restored to the public domain by the act of June 20, 1890, are subject to "homestead entry only," and hence are not subject to entry under the.

29-154

27. Lands in the Bitter Root Valley opened to settlement by the act of June 5, 1872, are not subject to entry under.

31-243; 32-280

28. Entry of lands in the Bitter Root Valley allowed under said act, is without authority of law, and not subject to the confirmatory operation of the proviso to section 7 of the act of March 3, 1891.

32-280

29. Lands in the Bitter Root Valley above Lolo Fork, opened to settlement by the act of June 5, 1872, are not subject to disposal under the timber and stone act; but where such lands have been sold under the latter act, and patents have issued therefor, no rights will be recognized as initiated against such lands by an application to purchase the same under the act of June 5, 1872, while the patents therefor are outstanding.

32-492

30. Tender of purchase price held equivalent to payment.

5-38

31. An entry may embrace noncontiguous tracts. (See 19-512.) 2-332

32. A timberland entry may not embrace noncontiguous tracts. 19-512; 20-450

33. Neither a married woman nor a minor may make entry. 2-332

34. Lands may be purchased by married woman who by laws of the State is recognized as a sole trader. 6-32; 16-404

35. Does not authorize purchase by married woman except with her separate money, in which her husband has no interest. 14-125

36. Married woman in the State of California is not disqualified to make entry by the fact that her husband has made an entry under the act and paid for the land with community money. 11-371

37. Entry may be made by a married woman acting in her own interests if she possess the requisite qualifications of citizenship. 10-47

38. The restrictions imposed by the circular of May 21, 1887, are intended to prevent an entry by a married woman for the benefit of her husband, but not to limit the right of entry in any State or Territory in which the act is applicable and where title would not vest in the husband by virtue of marital rights. 10-47

39. In case of an application by a married woman, it is immaterial whether the proof that she proposes to make the purchase with her separate money and for her own use and benefit be shown by the particular specified affidavits in the regulations, or in some other manner, so long as the facts required to be shown are proved by competent evidence in some portion of the record. 34-129

40. The fact that a married woman proposes to pay from her separate money only the fees and expenses of making the entry, and to borrow upon her own credit, to be secured by mortgage on the land, the sum necessary to pay therefor, does not of itself impugn the good faith of the applicant, in the absence of anything tending to show that the person from whom she proposes to borrow the purchase money is a lumberman or engaged in acquiring timbered lands, or that under pretense of a mortgage security the entry is made or intended to be for his benefit or that of

any person other than the applicant herself. 34-133

41. An entry made by a married woman and held by a transferee will not be canceled for want of the affidavit required of a married woman on final proof, where her sole interest is set forth in the preliminary affidavit, and in the final proof it is alleged that the entry is made for her sole use and benefit, and where she refuses to make such affidavit except on the payment of a further sum. 20-552

42. Entry made by an employee in the office of the surveyor general of the district in which the land is situated is illegal. 10-97; 11-96

43. The right to take lands chiefly valuable for the timber thereon under the settlement laws is limited to claims asserted in good faith for the purpose of securing a home. 24-352; 26-151

44. Does not exclude land from the settlement laws if the good faith of the claimant is clearly shown. 6-691; 7-555; 8-641; 9-139, 573; 24-310

45. Land covered by the *bona fide* settlement claim of a preemtor is not subject to timberland purchase; and the applicant for the right of purchase can not take advantage of irregularities in the assertion of the preemption claim. 24-376

46. A settlement not made in good faith, but for the purpose of securing the timber, will not defeat the subsequent application of another to purchase under said act. 16-400

47. Does not authorize entry of land included within a *bona fide* preemption claim, and the right of the preemtor is not limited in such case to the particular subdivision on which his improvements are situated. 11-145

48. Provisions of, do not exclude from homestead entry lands that are subject to sale under said act. 16-108

49. Recognizes the right of preemption on lands chiefly valuable for timber. 11-7, 145

50. Provides only for the sale of surveyed lands; hence an entry should not be permitted for lands within a known false or fraudulent survey. 9-12

51. Land not included in the approved plat of surrounding lands, as returned and filed, is not surveyed; and a timber and

stone entry allowed for such land is a nullity. 36-268

52. An application to purchase under the timber and stone act will not be received, nor any rights recognized as initiated by the tender of such application, for a tract embraced in a school indemnity selection of record, until such selection has been canceled upon the records of the local office. 6-696; 32-565

53. Department may, on proper grounds, cancel an entry any time prior to patent, and this authority is not abridged by the claim of a transferee. 9-573

54. Until patent issues the department may cancel an entry on sufficient proof that the land is not subject to such appropriation or that the entry is in fraud of the law. 11-484

55. The general authority of the commissioner to determine the validity of entries is not abridged by the provisions of this act. 14-617

56. No such vested right is acquired by an application to purchase, prior to final proof and payment, as will deprive Congress of the power to make other disposition of such lands. 32-387

57. No such vested right is acquired by an application to purchase, prior to the submission and acceptance of final proof and the payment of the purchase price and the necessary fees, as will except such lands from an order of the Secretary suspending the same with other lands from disposition and sale under the public-land laws. 32-472

58. After full payment of the purchase price and the issuance of final certificate upon a timber and stone entry, the Land Department is without jurisdiction over the land except to determine whether it was subject to such entry at the date thereof and whether the entryman was qualified to make the entry and had in all respects complied with the law; and subsequent withdrawal of the land in anticipation of proposed legislation affecting the disposition of power sites is unauthorized and not sufficient ground for withholding patent upon the final certificate. 39-201

59. No such right is acquired by a purchase of land under the act made in violation of an order suspending such

lands from entry as entitles the purchaser to be heard upon the question as to the validity of a prior railroad selection, or other claim asserted to the land, before carrying into effect an order for the cancellation of the purchase thus erroneously allowed. 33-426

60. Lands embraced in a railroad indemnity selection are not subject to entry or purchase under the act, and no right or claim can be initiated by an application to enter or purchase the same. 33-426

61. No such vested right is acquired by an application to purchase, prior to final proof and payment, as will prevent withdrawal under the act of June 17, 1902, and an entry erroneously allowed upon proof and payment made subsequently to such withdrawal confers no rights upon the entryman. 36-18

62. Sale after entry does not show bad faith sufficient to justify cancellation. 6-33

63. Entries made for the benefit of others are in evasion of the law and fraudulent. 3-84

64. An entry secured on proof and payment made in the name of the applicant, but in fact by and for the sole benefit of another, is an evasion of the law and fraudulent. 29-149

65. The sale of a timber-land claim after the acceptance of final proof and prior to the issuance of final certificate does not in itself warrant an attack on the entry. 20-24

66. An applicant does not become the owner of the land applied for, with legal right to sell, mortgage, or otherwise encumber the same, until the required proof has been furnished, the purchase price tendered and received, receipt given therefor, and final certificate issued, and at any time prior thereto the Land Department may require the applicant to furnish an affidavit of nonalienation. 34-476

67. An agreement, made prior to final proof, to sell land embraced in a claim defeats the right of purchase. 17-82

68. An agreement by a timber and stone entryman, prior to final proof and the issuance of certificate, for the sale of the timber on the land, is in violation of law. 34-584

69. Timber-land entries made for a speculative purpose, and through a collusive arrangement by which the entrymen are induced to make said entries with a view to selling the lands embraced therein to the other party to such arrangement, are in violation of the statute and must be canceled. 17-468

70. Timber-land entries made for speculative purposes are fraudulent and will be canceled. 19-258

71. A timber and stone entry made in good faith for the entryman's own benefit, without any intent or contract that it shall inure to any other person, even though made with the expectation of profiting by a sale of the land, is not an entry for "speculation." 32-349

72. A timber-land entry held by a transferee will not be canceled upon the uncorroborated admissions of the original entryman, made out of court, that the entry was procured at the instance and for the benefit of the transferee. 30-64

73. An entry under said act not made for the "exclusive use and benefit" of the entryman, but in the interest of and for the benefit of another, is in violation of said act and must be canceled. 14-392

74. A relinquishment of a claim prior to final proof confers no rights on the person obtaining and filing it. 2-333

75. Applicant who submits proof and makes payment, but subsequently acquiesces in a ruling that holds his claim subject to that of another, and withdraws the money paid, retains no right that can be enforced as against the intervening claim of a third party. 16-173

76. An applicant in good faith who is unable to procure the purchase money at the time fixed for the completion of the entry may be permitted, on new notice and in the absence of adverse claims, to complete the purchase. 12-561

77. The right to make entry is not affected by the fact that the applicant prior thereto applied for a different tract, and, upon proper grounds, withdrew said application. (See 37-145.) 29-195

78. The filing of an application under the act, for land subject thereto, and to the completion of which the Government interposes no obstacle, exhausts the right of the applicant under the act. 37-145

79. An entry for timberland under said act exhausts the right of purchase thereunder, though said entry is made for less than 160 acres. 29-212

80. There is no authority for the submission of proof, under an application to purchase, at any place except at the local office. 11-545

81. No rights are lost by an applicant through delay in the submission of final proof, where such delay is due to the conditions of business in the local office and the proof is submitted at the time fixed by the register. 18-216

82. Patent should issue in the name of the heirs generally where the death of the purchaser is disclosed by the record. (See 21-377.) 18-542

83. The right of entry, being acquired, may be completed by the heirs of the entryman. 5-38

84. In the event of the death of an applicant to purchase prior to acquisition of the legal or equitable title to the land, patent therefor, upon completion of the entry by his heirs, will issue generally to the heirs of the deceased applicant. 36-248

85. An entry should not be allowed in the absence of a personal examination of the land by the purchaser; but an entry made without such examination may be referred to the board of equitable adjudication if the defect is subsequently cured by the purchaser. 29-653

86. In view of the statutory provisions requiring reservations in patents under the timber and stone act of all vested and accrued water rights and ditches and reservoirs used in connection therewith, reservoirs and ditches constructed for use in connection with mining operations are not such improvements as will prevent acquisition of the land upon which they are located under the timber and stone act. 40-431

87. Rights of way under the acts of March 3, 1875, and March 3, 1891, are mere easements, and an applicant to purchase lands over which they pass, under the timber and stone act, will be required to pay for the entire area of the legal subdivisions applied for, notwithstanding such rights of way. 32-33

88. Timber and stone entries under the act of June 3, 1878, are not within the intent and operation of the confirmatory provisions of the act of March 3, 1891.

37-181, 564

89. The general departmental order of November 18, 1902, suspending action in all timber and stone entries in the States of California, Oregon, and Washington, pending investigation, is not a contest or protest within the meaning of section 7 of the act of March 3, 1891, and does not bar the operation of the confirmatory provisions of said section.

33-10

90. An applicant is entitled to a copy of the final proof submitted on his application.

34-133

91. The fee required to be paid at the time of the presentation of a timber and stone sworn statement should be returned to the applicant in all cases where for any reason other than fraud the local officers reject such sworn statement at the time of its presentation or at any time prior to the submission of proof in pursuance of the published notice.

39-573

92. Where an application under the timber and stone act is properly received and failure to offer proof thereon is the fault of the applicant, he thereby forfeits the right to return of the fee required to be paid at the time of the presentation of the sworn statement; but where for any reason other than the fault of the applicant the application is rejected, the fee is not earned and the applicant is entitled to repayment thereof.

40-131

93. The allowance of an application to contest a timber and stone entry is within the discretion of the Commissioner of the General Land Office, and not a matter of right granted by law; and where the applicant seeks to contest such an entry on the ground of underappraisement of the land, the commissioner may, in his discretion, reject the application and direct a reappraisement.

39-433

94. The fact that an applicant under the timber and stone act, subsequent to the regulations of November 30, 1908, is a successful contestant and makes application in exercise of the preference right resulting from a contest initiated prior to such regulations, does not entitle him to pur-

chase at the minimum rate of \$2.50 per acre, but he will be required to pay the appraised value of the land.

39-379

95. Although section 19 of the regulations of November 30, 1908, gives an applicant under the timber and stone act, in cases where the Government fails to appraise the land within nine months from the date of application, the right to purchase the land applied for at his appraised price (provided this is not less than \$2.50 per acre), nevertheless, if the Government appraisal at a higher price is actually filed before the applicant exercises such right, he must thereafter pay such higher price, notwithstanding the expiration of the nine months' period.

40-132

96. Where a tract of land has been appraised in accordance with the instructions of November 30, 1908, upon application of one desiring to make timber and stone entry thereof, and returned by the appraiser as not chiefly valuable for its timber, the applicant, upon submitting a *prima facie* showing, by affidavit, corroborated by at least two persons having actual knowledge of the character of the land, that it is chiefly valuable for the timber thereon, may be accorded a hearing to determine that question.

40-227

II. Character of Land.

97. Burden of proof as to the character of the land is upon the claimant.

4-164, 238

98. The burden of proof rests upon a timber-land applicant to show that the land has its principal value in the timber thereon, and is moreover, unfit for cultivation.

19-513

99. The act was intended to allow timber entry of tracts in broken, rugged, or mountainous districts, with soil unfit for ordinary agricultural purposes when cleared of timber.

2-632

100. Where the soil is a black loam and susceptible of ordinary cultivation except in minor portions where it is rocky or steep, it is not subject to entry.

2-633

101. The act does not contemplate that the lands must be wholly unfit for cultivation after removal of the timber, but

that they must be unfit for ordinary cultivation and valuable chiefly for timber.

2-336

102. Where the character of land sought to be acquired under the timber and stone act is put in issue, entry under that act may be allowed only where it appears that the growth of timber thereon is so extensive and so dense as to render the tract as a whole, in its present state, substantially unfit for cultivation, and that the chief value thereof is for the timber thereon.

35-498

103. To except land from entry under said act it must appear that crops can be raised profitably thereon.

8-159

104. Purchase should not be allowed unless it appears that the land would be unfit for ordinary cultivation if it was cleared of timber.

7-140

105. Timbered land that is fit for cultivation by ordinary agricultural process when the timber is removed is not subject to entry.

11-484

106. The fact that land is more valuable for its timber than for agricultural purposes is a circumstance to be considered as bearing upon the good faith of an agricultural claimant, but does not in itself require the cancellation of his entry.

29-606

107. Applicant under, must show affirmatively that the land applied for is not excepted from the provisions of the act.

15-321

108. A tract of land containing patches of arable soil, which, however, aggregate a less quantity than those parts unfit for cultivation, is properly subject to entry under said act.

6-630

109. The timber applicant must show that the land is uninhabited, unoccupied, and unimproved by others, and that it is unfit for cultivation and chiefly valuable for timber.

2-632

110. In determining the validity of a timber entry the department must ascertain whether the tract with the timber removed is unfit for cultivation.

12-503

111. Is applicable to unoffered land chiefly valuable for its timber where said timber is so extensive and dense as to make the land as a whole, at the date of the sale, substantially unfit for cultivation.

15-280; 16-404; 18-216; 19-253

112. The condition of land at date of purchase determines whether it is subject to purchase under said act.

16-546; 22-647

113. Land that is unfit for cultivation until the trees and stone are removed therefrom is subject to entry under said act.

15-564

114. Best evidence as to the character of the land from those engaged in tilling the soil in the vicinity.

4-238

115. Mesquite not regarded as timber.

6-662

116. The word "timber" as used in said act refers to such trees as are valuable for commercial purposes, and does not include trees that are valuable only as cordwood.

18-249, 306

117. Land upon which there is a growth of timber useful for mining purposes and so located with reference to mines as to give it a value for such purposes greater than its value for agricultural purposes is timberland and subject to entry under the act.

39-577

118. The word "timber" as used in section 1 of the act includes such trees, regardless of dimensions, as may be used in erecting buildings or irrigation works, constructing railroads, tramways, or canals, building fences or corrals, timbering mining shafts or tunnels, or which may be utilized in the manufacture of any useful article.

31-264

119. Lands covered by a growth of trees whose existence and maintenance operate to preserve the waters of a stream for irrigation purposes, but which are of no commercial value when severed from the soil, are not subject to disposal under the act of June 3, 1878, as lands "chiefly valuable for timber."

33-34

120. Entries made in good faith prior to March 21, 1894, the date of the decision wherein it was first held that trees suitable only for fuel were not "timber," may stand, though the trees on the land so entered are useful only for firewood.

21-67

121. Mineral lands excluded from sale.

1-600

122. The nonmineral affidavit usually required of agricultural claimants should be furnished by purchasers; but where an entry has been allowed on an affidavit

that is substantially the same as that prescribed by the department, a new affidavit need not be furnished. 20-6

123. The requirement that a timberland applicant shall show that the land applied for contains no mining improvements, contemplates improvements on existing mining claims. Abandoned mineral workings on land not included in any existing location or entry are no bar to a purchase under said act. 26-10

124. Land containing stone suitable for making lime may be entered as a placer or purchased under this act. 17-82

125. Land more valuable for the stone found thereon than for agricultural purposes is subject to entry under said act. 17-144

126. "Lands chiefly valuable for stone" are subject to entry under the act of June 3, 1878, regardless of whether or not the stone can, under existing conditions, considering the cost of quarrying and transportation, be marketed at a profit. 34-123

127. A placer location of a tract valuable for building stone precludes the sale thereof to a subsequent applicant under the act of June 3, 1878. 27-680

128. The act of March 3, 1883, making special provisions with respect to the disposition of Alabama lands returned as valuable for coal or iron is not repealed by the act of August 4, 1892, extending the provisions of the timber and stone act to all the public-land States. 19-389

129. Lands chiefly valuable for a deposit of slate and unfit for agriculture may be entered under this act. 12-100

130. If the character of the land is called in question, a hearing should be ordered. 8-412

131. A contest against a timberland entry on the ground that it embraces land of known mineral character, must be determined on the conditions existing at the date of the purchase, and not on developments subsequent thereto. 26-9

132. In a contest involving the character of land where the evidence is contradictory, and the land is returned "third rate, hilly, and rolling and very densely timbered with hemlock, fir, spruce, and cedar," the field notes may be accepted as conclusive. 18-321

133. The character of land embraced in a timber and stone entry is judicable by smallest legal subdivisions; and where at any time prior to patent, notwithstanding payment may have been made and accepted and certificate issued for the entire tract applied for, a legal subdivision is found to be not of a character subject to disposition under that act, the certificate should be to that extent canceled. 39-359

III. Publication.

134. Final proof and payment not to be made until after the period of publication has expired. 3-85; 4-282

135. Publication of intention to purchase prevents the land from being properly entered by another pending consideration of the application. 9-335

136. The departmental regulation requiring the submission of proof within 90 days from date of published notice may be waived where pressure of business in the local office requires such action. 9-335, 384

137. Entry may be referred to board of equitable adjudication where proof was not made within 90 days from date of published notice, due compliance with law in other respects being shown. 7-496

138. Entry may be referred to the board of equitable adjudication where the proof as to the character of the land was sworn to prior to the expiration of the period of publication. 6-719

139. The failure of an applicant to publish the notice of his intention to purchase, as posted in the local office, leaves the land embraced in his application subject to intervening adverse claims. 18-449

140. Republication of notice of intention to submit final proof will be required, where the witnesses who testify on behalf of the purchaser are not those named in the published notice. 20-6

141. The substitution of unadvertised witnesses, on the submission of final proof, does not call for the rejection of said proof, where the substitution was made in accordance with existing instructions from the General Land Office. 20-102

142. There is no authority to allow an applicant, who has published notice of intention to purchase a tract, to republish the notice, and thereafter make proof and payment, and thus in effect secure additional time in which to pay for the land.

20-559

143. The department will not authorize the withdrawal from disposition of land applied for under the, beyond the day fixed for proof and payment; but if the applicant is then unable to make payment for the land, he may thereafter do so, after republication, in the absence of any adverse claims.

21-492

144. The application of a timberland applicant to readvertise, he having failed to submit proof and make payment in accordance with his first advertisement, can not be allowed, where, pending action thereon, an application to purchase the land is filed by an adverse claimant.

26-529

145. Under rule 1 of the rules relating to final proofs, approved July 17, 1889, a timberland applicant may be allowed 10 days after the date named in the published notice within which to make proof and payment.

30-13

146. Where an applicant fails to submit proof on the day fixed in the published notice, or within 10 days thereafter, a withdrawal theretofore made for forestry purposes, embracing the land, thereupon immediately attaches, regardless of the fact that the applicant, within the 10-day period after the date fixed in the notice, may have filed application to readvertise notice of intention to submit proof.

34-191

147. An application to purchase land under the act of June 3, 1878, excepts such land from other disposition until the date first advertised for the submission of proof, and, in cases where the applicant is prevented by accident or unavoidable delay from submitting proof on such date, 10 days additional, but no longer; and upon the expiration of the final-proof period, if the applicant is then in default in the matter of proof, a previous withdrawal of the land for forestry purposes immediately attaches thereto, and all rights under the application to purchase cease and determine.

33-285

148. Lands embraced within applications to purchase under the act of June 3, 1878, at the date of the order of July 31, 1903, temporarily withdrawing certain lands for forestry purposes, are, so long as the provisions of said act are complied with by the applicant, excepted from such order; but where the claimant under any such application fails to submit proof on the day fixed therefor in the published notice, or within 10 days thereafter where prevented by accident or unavoidable delay from submitting it on the day set therefor, the application ceases to have any effect to reserve the lands embraced therein from other disposition, and the withdrawal thereupon immediately attaches and becomes effective as to such lands.

33-265

149. Under section 3, act of June 3, 1878, the register is required to furnish a timber and stone applicant a copy of the final proof notice, which notice the applicant shall cause to be published as prescribed by the act; and where an applicant acquires no knowledge that such notice has been issued until after the date set for the submission of proof, he is not in default merely because he fails to submit proof on such date.

33-365

IV. Adverse Claim.

150. Claims initiated subsequent to the application are subject thereto.

2-333; 4-177, 238, 282; 8-412; 9-335

151. The "adverse claim" or the "valid claim" in section 3 of the act is one initiated prior to the application; it must be filed during the publication.

2-334; 4-282

152. Affidavit based upon prior claim of record is an "objection" under section 3 of the act.

4-178

153. An Executive order reserving lands for a specific public purpose has the same effect, as against an application under the act, as an adverse claim of a private individual.

34-191

154. Adverse claims to be settled by hearing.

4-177, 282

155. A party not in interest may appear at any time alleging illegality in respect of the qualifications or proceeding of the applicant, the *bona fides* of his application, or the character of the land; the only

issue is the legality of the application, and the burden of proof is on the timber applicant. 2-336

156. The proviso to section 3 of the act contemplates a protest after entry against the issue of patent founded on an alleged priority of right. 2-336

157. Prior to the issuance of final certificate under a timberland application the local office has full jurisdiction to order a hearing on a protest or adverse claim, filed against such application. 24-88

158. The allegation of a person (claiming a settlement right) that the land is chiefly valuable for agriculture does not properly constitute a "contest" in which the adverse claims of the parties are to be adjudicated; it is a protest putting that one fact in issue only. 2-633

159. Protest calls in question character of land or good faith of applicant. 4-282

160. A protest against a timberland entry, on the ground that the land is not subject to such appropriation for the reason that it had been previously offered at public sale, states a sufficient cause of action. 22-345

161. Right of protest not confined to adverse claimant. 4-238, 282

162. A claim initiated subsequently to the application confers no rights and may not delay entry on the required proofs; if the United States do not pass title, the subsequent claimant has the next best right to the land. 2-334

163. An application to make homestead entry of land embraced in a prior application to purchase under the act of June 3, 1878, does not constitute a protest against the timber land application, and is not a sufficient ground for requiring a hearing to determine the character of the land. 33-534

164. Inhabited, improved, and occupied land not subject to purchase. 4-380

165. The existence of a valid settlement or improvement is fatal to the claim irrespective of the question of character of the land. 2-336; 24-114

166. *Bona fide* occupation and improvement of land bars a subsequent application under the timber and stone act. 2-336; 18-306

167. Land is not excepted from purchase under said act by the improvements of

one who is not asserting a claim to said land under any law authorizing the occupancy thereof. 14-415

168. An adverse claim based on settlement set up to defeat purchase under said act, will be limited to the technical quarter-section on which settlement and improvements are made, in the absence of an entry at the date of the timberland application, or actual notice of the settler's intention. 18-356

169. Improvements on a tract of land will not exclude it from entry under said act if not made and maintained under a *bona fide* occupation. 14-160; 22-234; 38-335

170. The right to purchase under, is not defeated by the prior adverse settlement claim of a homesteader, if such claim is not made and maintained in good faith by the settler. 17-496

171. Prior occupancy of an alien defeats the purchase of another. 4-380

172. Right under, not allowed to defeat or impair prior valid preemption claim. 5-366

173. Filing without settlement no bar to purchase. 4-70

174. An entry is barred by a prior homestead settlement irrespective of the character of the land. 2-172

175. Entry not allowed if the land contains mining improvements made and maintained by another in good faith. 10-271

176. As between a purchaser under, and a placer claimant priority in the assertion of a legal claim must determine the rights of the parties. 17-82

177. Lands as to which any *bona fide* claim is asserted under any law of the United States other than the act of June 3, 1878, or upon which there is situated any mining claim, or which contain mining or other improvements, except for ditch or canal purposes, save such as were made by or belong to the applicant, are not subject to sale or purchase under said act. 31-408

178. Old excavations or unoccupied cabins, situated on abandoned mineral locations, are not such "mining or other improvements" as will except the land from purchase. 31-264

179. In a controversy arising upon protest by a mineral locator against an application to purchase, where it appears that the land, when surveyed, was returned as of little if any value for agricultural purposes and chiefly valuable for timber, and the final proof in support of such application appears to be sufficient, the burden of proof at a hearing upon such protest rests upon protestant. 31-400

180. Where in such a case the evidence fails to show that the land contains valuable deposits of mineral, and it appears that the discovery on the strength of which the mineral location was made consisted of the digging of a prospect hole to the depth of 10 feet, in which about 2 cents' worth of gold was found, and ample time and opportunity were afforded prior to the hearing to test the extent and value of the alleged mineral deposits, without any systematic or continuous prospecting or working of the claim having been done, it can not be held that such a location is a mining claim within the meaning of said act. 31-400

181. Alleged settlement rights on timberlands should be closely scrutinized. 6-691; 7-555; 8-641; 9-139, 573

182. Applicant under, may attack subsisting preemption claim. 5-366

183. Conflicting preemptor should be cited by applicant. 3-435

184. A prior invalid claim will not defeat an application to purchase under this act. 3-210

185. Invalid preemption claim no bar to purchase, but the burden of proof is upon the applicant to show the invalidity of the preemption claim. 3-435

186. Application hereunder for land covered by a preemption claim only raises the question of the preemptor's good faith and compliance with the law. 3-258

187. A *prima facie* valid preemption filing or other claim of record bars a timber application (unaccompanied by an impeachment of it). 2-633

188. Right of purchase not defeated by the intervention of an adverse claim where, through error of the local office, the applicant failed to appear on the day fixed for proof and payment. 10-415

189. On application to purchase lands covered by prior preemption claim the

burden of proof is upon the applicant to show the invalidity of said claim. 6-691

190. In a hearing to determine the priority of right between an applicant and an alleged prior settler the character of the land may be also placed in issue. 8-16

191. In contests between prior settlers and applicants under this act the character of the land may be taken into consideration in determining the good faith of the settler. 7-555

192. Hearing ordered, after proof was submitted, to determine the right of an adverse claimant who alleged want of notice. 4-177

193. The burden of proof that rests with the applicant is not shifted to a protestant who objects to the acceptance of final proof. 15-564; 18-356

194. The burden of proof that rests upon a timberland claimant, in case of a protest against his right of purchase, requires at his hands an affirmative showing that the land is of the character contemplated by the act, and unoccupied, uninhabited, and unimproved; but does not require of him to show that none of the neighboring settlers are making claim to the land when their actual settlements are in other quarter sections and no improvements have been made on the quarter section claimed by him. 20-24

195. Successful contest against an entry under this act entitles the contestant to a preferred right of entry. 17-151

TIMBER CULTURE.

See ALIENATION, VIII; APPLICATION, VII; CONTEST, XIII; FINAL PROOF, XV.

I. Generally.

II. Breaking.

III. Planting.

IV. Cultivation.

V. Entry.

I. Generally.

1. Circular of February 1, 1882, with blank forms. 1-638

2. Circular of June 27, 1887 (approved July 12, 1887). 6-280

3. Circular of April 27, 1891, under the repealing act of March 3, 1891, with a copy of said act. 12-405

4. The act of 1878 extended rights secured under the former acts. 5 234
5. Entryman under act of 1874 became entitled to benefits of act of 1878 (as to area to be cultivated) at date of its passage. 2-280
6. Requirements of the law are explicit and may not be waived or modified by the General Land Office. 1-120
7. Requirements of the law like that of the preemption law. 1-142
8. Entry made in arid country at the claimant's risk. 1-123; 19-493; 22-312
9. That the area cultivated in trees is in excess of 10 acres is not material. 4-90
10. Work may be done at any time within the required period. 1-137
11. Work may be done by entryman, his agent, or his vendor. 1-137; 3-502; 4-493
12. Work may be done by an agent, but the entryman will be responsible therefor. 1-120
13. Noncompliance with law not excused because the default resulted from the negligence of the entryman's agent. 4-493; 10-341; 11-161, 289; 12-476; 21-191
14. Agent of entryman may not take advantage of his own wrongful act to contest the entry. 4-494
15. Good faith of claimant may be taken into consideration in determining whether there has been due compliance with law. 1-142, 148; 4-494; 7-331; 9-304, 567, 646
16. Whilst the requirements of the law must be carried out fully, nevertheless the object of the law, "to encourage the growth of timber," should always be kept in view in determining the question of compliance with them. 2-306
17. Must show good reason in case of failure to fully comply with the law. 5 363
18. Substantial compliance with the law in good faith held satisfactory. 4-205
19. Full area must be broken and cultivated to trees prior to final proof. 7-365
20. Failure to secure the requisite growth of thrifty trees warrants cancellation if such condition is the result of negligence and bad faith in the matter of cultivation. 8 601
21. Slight deficiency in acreage will not justify cancellation. 6-755; 7-365; 9-567
22. Entry not canceled though but 8½ acres were in cultivation, the good faith of the claimant being apparent. 3-365
23. An entry should not be canceled where, through mistake, a small portion of the area in cultivation is outside of the claim. 9 304
24. Where the failure to secure a growth of timber results from the want of ordinary diligence the entry must be canceled. 11 183
25. Failure to comply with the letter of the timber-culture law may be excused, if there is a reasonable compliance with said law, and good faith is manifest. 18-471
26. Failure to secure required growth not sufficient ground in itself to warrant cancellation of entry on contest, such failure not being due to neglect of the entryman. 6-491, 773; 12 502; 14-423; 23 54
27. Failure to secure the requisite growth of trees does not call for cancellation where such result is not due to negligence in planting and cultivation, but to the character of the season and seed that proved defective. 11-468
28. Entrymen not held responsible for the results of incendiarism or destruction by floods. 2-307; 4-164
29. The loss of trees by fire does not warrant the cancellation of the entry where no ordinary precaution could have prevented such loss. 7-11
30. In case of an entry held by a married woman, the wife can not be regarded as responsible for the failure of her husband to assist her in conforming to the requirements of the law. 18-118
31. Absence of a "fire break" not in itself evidence of bad faith. 7 11
32. Failure of seeds to grow not a cause of forfeiture in the absence of bad faith. 3 581; 7 333
33. Noncompliance with law not excused on the plea that the land is too wet for the cultivation of trees if the character of the land was known at entry and no effort was made thereafter to improve its condition. 8 511
34. Plea of sickness will not excuse non-compliance with law if the claimant was in default at the time he was disabled for further compliance with law. 10-352

35. Drought may be accepted as an excuse for noncompliance with the law.

4-346; 7-331

36. Compliance with law must be shown pending application for amendment.

5-349

37. A timber-culture claimant, who enters a tract covered by a swamp selection, is required to comply with the law pending the right of the state to be heard in defense of the selection.

19-484

38. Entrymen should comply with the law during the pendency of contest.

3-486; 5-104

39. Compliance with law must be shown during the pendency of a contest where an entry is irregularly allowed for land thus involved.

14-431; 18-504

40. An entryman can not be required to show compliance with the law after his entry is canceled, and while the land is covered by the intervening entry of another.

23-54

41. During suspension of township plat the entryman is excused from compliance with law in the matter of cultivation and planting.

16-403

42. The heirs of a deceased entryman must show compliance with the law.

5-398

43. No statutory authority for a requirement that the trees should attain a particular height or size to warrant the issuance of patent.

6-624; 8-191; 9-285

44. Amendatory act of March 3, 1893, provides for the submission of final proof without showing the quality and character of trees then growing on the land.

16-346

45. That the trees have not reached a particular height or size will not warrant cancellation if the entryman has been diligent in cultivation.

8-535

46. Trees of the poplar family regarded as timber trees.

3-145

47. As late as 1879 the cottonwood was not classed among timber trees.

1-166

48. The osage orange regarded as a timber tree when cultivated as such within the latitude where it attains its natural growth.

6-119; 9-3; 10-409

49. Facts in relation to the growth and size of box elder, ash, and catalpa trees.

2-310

II. Breaking.

50. The entryman is entitled to a full year, exclusive of the day of entry, in which to break the first 5 acres.

2-249

51. At the end of second year there must be 10 acres broken.

4-303

52. The "breaking" required the first year is sufficient if the land is thereby rendered fit for cultivation "to crop or otherwise" the second year.

6-669

53. The purpose of the law is attained by a thorough overturning of the entire area, whether by plowing or otherwise (grubbing), so as to fit it for cultivation.

2-264

54. When one enters land with knowledge of its unfitness for tree culture he will be held to a strict compliance with the requirements of law (breaking).

2-265

55. Breaking and planting may be done in advance of the required time.

1-137;

4-175, 303; 12-502

56. Breaking done on land by a former occupant inures to the benefit of the entryman if properly utilized.

1-137; 3-482; 4-175, 543;

10-322; 11-43, 460; 15-9

57. Credit allowed for breaking done by former entryman if such work has been utilized by the claimant.

3-483;

4-542; 6-829

58. Credit for breaking and cultivation performed by a previous occupant may be allowed where the land is left in a proper condition for the growth of trees, and the entryman in such case is not required to make use of the same until the second year of the entry.

13-304; 16-300

59. An entryman may properly claim credit for breaking during the first year of his entry, though done by an adverse claimant without the knowledge or consent of the entryman.

17-178

60. Failure to break the full acreage does not call for cancellation where good faith is manifest and the default is cured when discovered.

11-189

61. Where through mistake but $8\frac{1}{2}$ acres were broken in the first two years the entry was not canceled.

1-126; 3-372

62. The statutory requirement as to breaking can not be waived even though

the land will raise crops without breaking. 12-91

63. Failure to break not excused by reason of drought. 1-141

64. Breaking in Colorado possible without irrigation. 1-123

65. Failure to break and cultivate where caused by the wrong of contestant, excused. 3-486

66. Failure to break the requisite 5 acres may be excused on due showing that it was caused by threats of personal violence. 14-65

67. Failure to break the second 5 acres within the statutory period does not call for cancellation of the entry where said failure is solely due to the continued ill health of the claimant and good faith is clearly manifest. 18-118

III. Planting.

68. Planting of first 5 acres must be done third year. 1-135

69. Planting before the time fixed by the law is compliance with its requirements if the land has been properly prepared. 11-460; 19-172

70. Planting should be done when the ground is in proper condition. 4-174; 5-364

71. Planting should be done when the ground is in such condition as will, under ordinary circumstances, be favorable to the growth of trees. 12-476

72. The entryman is justified in adopting a method of planting found to result successfully in that vicinity. 7-468

73. Sowing tree seeds broadcast not in compliance with law. 5-8

74. Sowing tree seeds broadcast with grain is not a proper "planting." 6-716

75. Sowing tree seeds broadcast can not be accepted as in compliance with the timber-culture law. 12-476; 14-98

76. Sowing tree seeds on frozen ground partly covered with snow can not be accepted as compliance with law, especially where it appears that the work might have been done seasonably and in good order. 11-289

77. A slight failure in planting the requisite area may be excused where the good faith of the entryman is manifest. 7-440

78. Failure to properly distribute the trees not cause for cancellation. 4-162

79. Unfavorable weather excuses the failure of the planting where diligence in remedying it was exercised. 2-314

80. Replanting must follow when trees are destroyed. 1-128

81. Failure to replant 2 acres destroyed by fire excused, it appearing that the entryman had the trees for such replanting under cultivation. 4-163

82. Extreme drought furnishes a sufficient excuse for a short delay in replanting where good faith is apparent. 7-234

83. One who has complied with the law, submitted proof, and received final certificate is not required to replant where the trees are subsequently destroyed. 11-566

84. Planting of previous entryman available. 4-291, 543

85. Entryman may utilize trees planted and cultivated by a previous occupant whose possessory right the entryman has purchased. 16-522; 28-245

86. The entryman is responsible for the negligence of his agent in planting. 7-66

IV. Cultivation.

87. Cultivation is such care and attention as will best promote the healthy growth of trees. 1-117, 130

88. Acts of cultivation should show good faith. 3-398; 4-174; 5-40, 331

89. Character of soil and season, age and kind of trees, to be considered in passing upon question of cultivation. 10-10

90. Method of cultivation varies with the locality. 5-9

91. No fixed rule can be laid down as to what constitutes satisfactory cultivation. 10-10

92. Failure to secure the requisite growth of trees calls for cancellation of an entry where the absence of good faith in the matter of planting and cultivation is apparent. 26-490

93. Due compliance with the law requires the land to be properly prepared for planting, the trees to be planted when the ground is in proper condition therefor, and such cultivation and protection given

the trees thereafter as will best secure their healthy growth. 18-317

94. Requirements of the law call for irrigation of the land if trees can not be grown without irrigation. 8-511; 16-115

95. Such method of cultivation should be adopted as will secure the best results. 4-162

96. The law does not necessarily require that the trees planted one year shall be, in all cases, cultivated the following year. 9-148

97. The good faith of the entryman should be taken into consideration in determining whether acts of cultivation performed prior to the statutory time fixed therefor are a substantial compliance with law. 15-591

98. That the land is in a weedy condition will not justify a finding of bad faith if the requisite number of trees are in a healthy growing condition. 9-567

99. Inattention to trees after planting evidence of bad faith. 4-174

100. Replowing of 5 acres second year treated as cultivation. 1-135

101. Mulching may be regarded as cultivation. 1-130

102. Hoeing around young trees and permitting a growth of grass and weeds between them, which is necessary to insure their protection in a cold climate, satisfies the law. 2-305

103. Want of cultivation not presumed from the small number of trees growing at the end of three years. 1-127

104. The entryman must make adequate provision for the protection of the trees planted. 14-98

105. Trees should be protected from inroads of cattle and horses. 10-341

106. Though subsequent transplanting may be required to secure the requisite growth, such fact does not warrant a finding of bad faith or improper planting. 10-10

107. Failure to cultivate may not be taken advantage of by one employed to perform such act. 4-205

108. One who has control of the land for purposes of cultivation will not be permitted to take advantage of his own failure to cultivate in order to defeat the rights of the entryman. 16-365

109. The time occupied in the preparation of the soil and planting the trees may be computed as forming a part of the statutory period of cultivation. (See 6-624.) 2-309; 3-260

110. The eight years of cultivation must be computed from the time when the required acreage of trees, seeds, or cuttings is planted. 6-624; 8-191; 9-86, 284

111. Under entries made prior to the regulations of June 27, 1887, the time occupied in the preparation of the soil and planting the trees may be computed as part of the statutory period of cultivation. 9-86, 284, 624; 10-409

112. The instructions of July 16, 1889, with respect to the rule to be observed in computing the period of cultivation did not change decisions that had become final or authorize the General Land Office to modify said decisions. 10-93

113. The act of March 3, 1891, does not relieve the entryman from cultivating the quantity and character of trees specified in the act of 1878, nor repeal the requirement of 675 thrifty trees to each acre at final proof. 14-434

V. Entry.

114. Circular of February 1, 1882, with blank forms. 1-638

115. Can not be allowed on application made since the passage of the act of March 3, 1891. 13-169

116. Made on the date of the repealing act, March 3, 1891, by a successful contestant may be allowed to stand. 14-614

117. Made on March 3, 1891 (the date of the repealing statute), are valid so far as said act is concerned, as it was not approved by the President until after the local offices were closed for business on that day. 15-142, 403

118. Rights under the timber-culture law are initiated by the application to enter. 23-1

119. No rights under the timber-culture law are acquired by settlement, and acts of settlement performed prior to the repeal of said law do not initiate a claim protected by the statute of repeal. 15-513

120. The preliminary affidavit is statutory, and the department has no authority to add thereto. 3-606; 8-20

121. Voidable only where application and preliminary affidavit are executed outside of the district and Territory in which the land is situated. 4-492; 6-762

122. Allowed on a preliminary affidavit executed outside of the district and State in which the land is situated, is not void but voidable, and may be amended in the absence of an adverse claim. 17-400

123. Allowed on preliminary affidavit executed outside of the State where the land is situated is voidable, but may be amended to relate back to the original entry in the absence of adverse right. 8-478

124. Based on preliminary affidavit executed outside of the district must be canceled if contested on that ground. 14-466

125. Made through an agent and without the preliminary affidavit is illegal, but the defect may be cured by affidavit properly executed, which will be held to relate back to the date of entry. 7-50

126. Based on preliminary papers falsely purporting to have been properly executed, but in fact not sworn to before any officer, is illegal, and the defects can not be cured by amendment. 9-238

127. Entry excludes subsequent claim founded upon settlement. 3-565

128. But one quarter may be entered in a section. 3-182, 511; 5-173

129. Excess over 160 acres must be paid for in cash or relinquished. 14-450

130. Payment for excess over 160 acres is a proper requirement, though the entry may have been made prior to the regulation of March 28, 1880. 15-396

131. May embrace a technical quarter section without reference to its relation to the entire section. 11-378

132. One quarter, approximately, of the number of acres in any section may be entered under the act of June 14, 1878. 13-53

133. Under the act of March 13, 1874, a second or additional entry of 80 acres of nonadjacent land may be made where the two entries taken together do not exceed 160 acres and the first entry is for less than 40. 13-509

134. Of but 160 acres allowed in a section of 640 acres. 6-804

135. Allowed in the proportion of 160 acres for every 640 in sections containing an excess. 4-69

136. Not more than one-quarter of a fractional section can be taken under the timber-culture law. 10-681

137. Timber-culture entry to extent of 160 acres may be made in a section containing 342 acres. 2-322

138. Two, in one section allowed to stand where the amount of land covered thereby was only slightly in excess of one-fourth of the section. 6-339

139. Is limited in acreage to one-fourth of the land embraced in the section, except where a technical quarter section is entered. 16-522;

20-337; 29-407; 33-372

140. Second, in a section can not be allowed to cover a fractional subdivision if the acreage in both entries, taken together, amounts to more than one-fourth of the whole section. 16-534

141. Discretion of the commissioner in allowing a, that embraces an excess in acreage does not extend to a case in which over one-half of the subdivision entered is "excess." 16-534

142. In adjusting two, in a section that together embrace an excessive acreage priority of entry determines priority of right. 16-522

143. Attacked on account of excessive acreage may stand where, prior to the day fixed for trial, the relinquishment of another timber-culture entry in the same section removes the objection to the entry under attack. 16-63

144. Will not be allowed where there is a prior entry in the same section, though contest against it is pending. 2-34; 4-448

145. The second, allowed to stand, the first being *prima facie* invalid. 5-173

146. May be allowed where there is a prior timber-culture entry which is illegal and can not go to patent. 2-256

147. For less than 160 acres exhausts the right, and such an entry can not be enlarged to include a tract which the entryman, at the time of making the original entry, supposed was not subject to such appropriation. 9-376

148. Of a fractional subdivision that embraces less than 40 acres, under which the area planted to trees is less than $2\frac{1}{2}$ acres, may be equitably confirmed where the entryman followed the construction of the

law in force at the time of planting, and shows on final proof a greater number of growing trees than is required on the statutory acreage. 22-166

149. Under the law a person may make but one entry. 3-185

150. Refused where another entry on the land had been allowed; but in view of the equities a second entry is permitted. 2-253

151. Timber-culture entry for S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and two lots (91.14 and 91.21 acres) must be canceled as to either the S. $\frac{1}{2}$ or one 40 and one lot, or one of the lots; any excess to be paid for in cash. 2-315

152. Entry of land in different sections not allowed. (See 17-358.) 3-361

153. Embracing land in different sections may be allowed to stand where made prior to the act of June 14, 1878. 15-79

154. Land covered by, is at the moment the entryman is in default open to the entry of the first legal claimant. 2-266, 283, 297, 318; 4-508

155. Possession of the entryman who is in default can not defeat the application of a contestant. 4-508

156. Settlement and filing do not reserve land from, but serve as notice to the timber-culture applicant of the preemptor's priority of right. 9-262

157. Made of land occupied and improved by another is at the same risk as though the adverse claim was of record. 3-153

158. Land not reserved from, by unlawful inclosure. 6-608

159. Should not be allowed upon application made while the land is covered by an uncanceled entry. 1-164; 3-320; 14-127

160. Should not be allowed on lands subject to Indian occupancy. 13-302

161. A timber-culture entry must be made on vacant, unimproved land, and not on land covered by the valuable improvements of another and in the possession of another. (See 6-608.) 2-118, 269

162. A timber-culture entry may not be made within the incorporated limits of a city or town. 2-634

163. That land has been broken does not exclude it from entry if devoid of timber. 7-733

164. May be made on land covered by a preemption filing, and takes the land on failure by the preemptor to make final proof in the time required. 2-593; 3-499; 5-173

165. The occupancy of land by one who asserts no claim thereto within the period prescribed by law does not exclude such land from entry. 11-300; 13-225; 21-10

166. Right of, not defeated by the preemption filing, and possession thereunder, of one who has previously exhausted his rights under the preemption law. 13-251

167. As recorded, allowed to stand, though not for land originally applied for. 4-112

168. Held for cancellation on account of conflict with the prior settlement right of another may stand on the subsequent abandonment of the adverse claim. 8-461

169. The term "homestead laws" in the third section of the act of June 14, 1878, is used in a generic sense, and will embrace the preemption law. 5-591

170. May be canceled when the executor and sole devisee files relinquishment and it appears that compliance with law can not be shown within the life of the entry. 7-383

171. A claim under the acts of 1874 and 1878 is solely for the cultivation of timber; if the land is used as capital or for speculative or other purposes inconsistent with the object of the acts, it is held in violation of law and is subject to forfeiture. 2-329

172. Made for the benefit of a partnership, composed of the entryman and another, is illegal, and must be canceled. 17-330

173. An entry that has been made in the interest of another fraudulent. 2-50

174. Not affected by acts of entryman in procuring another to be fraudulently made in the name of his wife. 1-136

175. Right of, accorded to highest bidder in case of simultaneous applications. 3-555

176. Natural growth of timber precludes entry. 1-154; 4-111; 6-217, 772

177. Land shown by field notes to be timber land not subject to entry. 3-361

178. A natural growth of trees valuable for domestic or commercial purposes excludes the section from the operation of the timber-culture law. 9-288; 11-500, 525

179. Is restricted to "sections" devoid of timber, and the restriction does not vary in proportion to the amount of land entered in such section. 13-300

180. Not allowed, though the land applied for has but few trees thereon and is the only public land in the section, if the section is not "devoid of timber." 8-544; 9-182, 520

181. That the natural growth is small and has been partly destroyed by fire does not affect the question as to whether the land is devoid of timber. 3-144

182. A natural growth of timber excludes land from, though such growth may require protection from fire to render it valuable. 10-13

183. That the natural growth of timber is restricted by annual fires does not render the section containing such growth subject to entry. 5-689

184. Whether a given section is devoid of timber may be determined by inquiring whether nature has provided timber which in time will become an adequate supply. (See 6-217.) 2-267

185. The number of trees required at final proof a guide in determining whether land is excluded from entry by reason of the natural growth. (See 6-217.) 3-437

186. "An adequate supply" exists under the rule in *Blenkner v. Sloggy* to the exclusion of an entry where the natural growth is equivalent to the amount required to be cultivated by the entryman. (See 6-217.) 3-143

187. Former rulings of the department on the phrase "devoid of timber" cited and compared. 8-467

188. The phrase "devoid of timber" should be construed as meaning land practically so; no arbitrary rule can be formulated to cover every case. 8-467; 9-161

189. Character of land at date of, determines whether it is properly subject to such appropriation. 9-623

190. The departmental construction of the timber-culture act prevailing when the entry is made must be accepted in deter-

mining whether the land is "devoid of timber." 9-95; 16-42

191. Should not be allowed on the ground that the rulings of the department recognized the land as subject thereto when the application was made, when in fact the land was not "devoid of timber." 6-772

192. Should not be canceled on the ground that the land is not "devoid of timber," if allowed under rulings in force, and the entryman thereafter proceeds to comply with the law. 5-261; 6-225; 7-75; 8-399, 534; 9-622; 10-190; 25-65

193. Made in good faith of land not strictly "devoid of timber" will not be disturbed if allowed in accordance with the departmental construction of the statute then in force. 11-426

194. Rights acquired under former rulings as to the character of land subject to entry not disturbed. 5-261, 690

195. The present construction of the act as to lands subject to entry thereunder should not be enlarged to protect entries not allowed under the former construction. 10-190

196. Should not be allowed if the returns show timber in the section; but a hearing may be had, if the correctness of the return is questioned, to determine whether the land is subject to entry. 8-467; 9-437

197. Where applicant proves that the markings on the plats showing timber were erroneous, entry should be allowed as of date of application. 2-850

198. Land not excluded from, by a scanty growth of brush lining the banks of a small stream that passes through the section. 2-274; 8-534

199. Where the timber growing in a section is confined to fixed limits, with no prospect of spreading, and is inadequate in quantity (500 trees), entry is allowed. 2-268

200. May be made where the trees, confined to a point of land between two sloughs, were dead, dying, or decayed at the top. 2-273

201. Made on land containing cottonwood trees, when such trees were held not to be timber trees, is legal. 1-165

202. May be made where the trees, confined to the margin of a stream, at maturity become unfit for use as timber.

2-272, 274

203. Not allowed for land made "devoid of timber" by the removal of a natural growth.

2-270; 5-303

204. Land naturally devoid of timber subject to, although it may have been broken.

7-373

205. The act of 1874 did not specify the character of land subject to entry, but left such matter to the regulation of the General Land Office.

1-165

206. Right to commute under the act of March 3, 1891, is limited to persons who have, for a period of four years, in good faith complied with the law.

16-115; 18-233

207. The right to commute under the act of March 3, 1891, can be exercised at any time within the life of the entry by one who can show that he has complied with the law for the four years preceding the application to commute.

29-214, 641

208. The right to commute under the amendatory act of March 3, 1891, is dependent upon compliance with law up to the time when application is made to commute.

18-235; 21-29

209. The right to commute under section 1, act of March 3, 1891, can only be exercised by a resident of the State or Territory in which the land is situated.

15-176; 23-9

210. Administrator of the estate of a deceased entryman can not commute for the benefit of an heir who is not a resident of the State in which the land is situated.

16-322

211. The heir of a timber-culture entryman can not commute the entry of the decedent under section 1, act of March 3, 1891, if not a resident of the State in which the land is situated.

18-1, 71

212. Commutation of, under the act of March 3, 1891, should not be made without due publication of notice of intention to submit final proof.

16-482

213. Commuted under section 1, act of March 3, 1891, and embracing land in two sections, may be allowed to stand in view of the fact that there is no express provision of law prohibiting such an entry,

and that the rights of no other entryman can be affected thereby.

17-358

214. The privilege of commuting accorded by section 1, act of March 3, 1891, does not defeat the right of a contestant to proceed with a pending contest.

19-38

215. Can not be commuted in the presence of a contest on which there has been no hearing.

21-3

216. The right to commute may be recognized on behalf of the heirs where the entryman during his lifetime has substantially complied with the law for the requisite period.

20-236

217. The department has no authority to return the money paid on commutation and allow new proof to be made under the amendatory act of March 3, 1893, on a showing that the entry in question was commuted in ignorance of said amendatory act.

21-287

218. Under the act of March 3, 1893, the failure of an entryman, who has complied with the law for eight years from date of, to continue such compliance, will not defeat his right to a patent, though he may not have succeeded in securing a growth of trees.

24-448

219. Married woman can not make.

1-127; 16-130

220. May be made by a deserted wife (with children) as the head of a family.

2-311

221. A married woman is disqualified for making, unless she is the head of a family.

14-510

222. Not allowed to a married woman as a "deserted wife" on proof of temporary absences of the husband and noncohabitation for a year.

6-296

223. The marriage of a single woman subsequent to application, but prior to action thereon, does not invalidate.

1-131

224. Rights of deceased claimant descend to the heirs and not to the widow.

1-121, 127, 136

225. Is subject to devise by will, and the executor who complies with the law may submit final proof.

15-162

226. Is subject to devise by will, and on due compliance with law the devisee is entitled to submit final proof and perfect the entry.

26-690

227. The heir of a timber-culture entryman, who in his lifetime had fully com-

plied with the law, may perfect, notwithstanding he may have formed an intention to sell the land as soon as the patent therefor is obtained. 20-214

228. The heirs of an entryman whose final proof shows partial compliance with law may relinquish part of the claim and receive final certificate of the amount of land earned by planting and cultivation, or commute the entire entry under section 1, act of March 3, 1891. 15-107

229. Right of, in the heirs where the applicant dies before the status of the land is determined. 5-422

230. Rights of the widow under Kansas laws amount to a moiety of the husband's estate. 1-149

231. The sole devisee of a deceased entryman considered as a "legal representative." 8-452

232. Devisee of the sole heir of a deceased entryman is the only party in interest entitled thereafter to be heard in support of the entry. 21-8

233. For the heirs may be made by one of them without power of attorney from the others. 5-42

234. Entryman not required to reside in the State or Territory wherein the land is situated. 1-148

235. An entryman who, through a mistake in measurement, fails to plant and cultivate the requisite acreage, may be permitted to perfect title for the amount of land earned by his compliance with law, and relinquish the remainder. 20-84

236. Where notice of the expiration of the statutory life of a, is not given in accordance with the address furnished, and the entry is canceled for failure to submit final proof, it should be reinstated; and equitable action thereon will not be defeated by the intervening entry of another if good faith is manifest and the final proof shows due compliance with law except in the matter of submitting proof within the statutory period. 24-288

237. May be equitably confirmed on proof submitted after the expiration of the statutory period, notwithstanding an intervening contest charging failure to make such proof in time, if such failure is satisfactorily explained. 25-501

238. Allowed prior to the expiration of the statutory period of cultivation, may

be equitably confirmed, in the absence of any adverse claim, where it appears that after the issuance of final certificate the land was conveyed to another for value and without notice of the defect in the final proof, and subsequent compliance with the law in the matter of cultivation duly appears. 26-547

239. Same principle governs allowance of second timber-culture, as obtains in the case of a second homestead. 6-505

240. Second timber-culture, will not be allowed when the first was upon land not subject thereto. 3-152

241. Second timber-culture, may be allowed where the first, through mistake, was for land not subject thereto, and good faith is apparent. 7-297

242. Second timber-culture, may be made where the first, through defective surveys, includes land not intended to be taken, and is for that reason relinquished. 15-39

243. A second timber-culture, may be permitted to stand where the first is relinquished for the reason that trees could not be grown on the land. 15-560

244. Second timber-culture, allowed to stand as an amendment of the first. 2-852

245. Second not allowed through process of amendment. 6-505

246. Failure to secure growth of timber is not good ground for the allowance of second timber-culture. 1-125

247. Second timber-culture, may be made where causes beyond the entryman's control prevent the use of the land first entered for timber-culture purposes. 2-327

248. Second timber-culture, may be made by one whose former entry is canceled because made on land occupied and improved by another. 2-118

249. Second timber-culture, may be made by a citizen who, when an alien, innocently made a prior entry which was canceled for noncompliance with law. 2-250

250. Second timber-culture, may be made by one who was not allowed to amend a former entry because of the interposition of other rights where the equities were with him. 2-253, 254

TIMBER CUTTING.

See ALASKAN LANDS, 9-14; HOMESTEAD, 153-154; RAILROAD GRANT, 1297; RESERVATION, 544-545; RIGHT OF WAY, 13, 40-45; TIMBER AND STONE ACT; TIMBER TRESPASS.

1. Instructions of June 30, 1882. 1-697
2. Protection of timber from fire. Circular of September 19, 1882. 1-696
3. Circular of October 12, 1882, relative to cutting mesquite. 1-695
4. Circular of December 15, 1885, as to the protection of timber. 4-289
5. Circular of August 5, 1886. 5-129
6. Regulations of May 5, 1891, with respect to timber cutting on the public domain, as modified by act of March 3, 1891, and the amendatory act of the same date. 12-456
7. Rules and regulations governing the use of timber on the public domain. Circular issued under the act of March 3, 1891. 13-149
8. Instructions of January 13, 1892, and approved form of letter to applicants with information as to limitation of privilege. 14-96
9. Circular of June 29, 1897, with respect to, for purposes of exportation. 24-587
10. Export of public timber from western Wyoming into Idaho; circular of July 23, 1898. 27-276
11. Logging regulations with respect to ceded Chippewa lands. 26-84; 27-353, 724
12. Rules and regulations governing the use of timber on nonmineral public lands in certain States and Territories, under the act of March 3, 1891. 26-399
13. Rules and regulations governing the use of timber on public lands in the district of Alaska, under the act of March 3, 1891. 26-404
14. Rules and regulations of August 11, 1898, under the act of July 1, 1898, authorizing the sale of timber on the portion of the Colville Indian Reservation vacated by the act of July 1, 1892. 27-366
15. Regulations of June 24, 1908, under section 11, act of May 14, 1898, relative to sale and use of timber on public lands in Alaska. 36-536

16. Reports of special agents; order of December 14, 1898. 27-682

17. The regulations under the act of June 4, 1897, with respect to the sale of timber on forest reservations, do not contemplate the subsequent sale, without further notice, of any timber for which a satisfactory bid is not received within the time designated in the published notice; but the adoption of regulations permitting such a sale is competent under said act.

29-382

18. Residents of towns near a forest reserve are within the purview of the act of 1897, with respect to the free use of timber and stone found upon such reservations.

29-382

19. Regulations of January 18, 1900, with respect to the use of timber on public mineral lands.

29-571

20. Regulations of March 16, 1900, governing free use of timber on public mineral lands.

37-492

21. Regulations of February 10, 1900, with respect to the use of timber on nonmineral public lands, and revoking former regulations.

29-572

22. Instructions of August 21, 1907, relative to permits to cut timber by agent from nonmineral public lands.

36-73

23. Instructions of March 20, 1901, under act of March 3, 1901, relative to the use of timber on nonmineral public land in Montana and Wyoming.

30-540

24. Instructions of March 22, 1901, under act of March 3, 1901, relative to use of timber on nonmineral public land in California, Oregon, and Washington.

30-542

25. The owner of a mining claim in the Colville Indian Reservation has the same right to use and remove the timber upon his own claim as the owner of a mining claim elsewhere.

30-88

26. In construing the provisions contained in the two acts of June 3, 1878, and the act of August 4, 1892, with respect to timber cutting, it must be held that the first of said acts of 1878 (20 Stat., 88) relates to all mineral lands of the United States, but to none of any other character, and permits the cutting of timber on such lands for building, agricultural, mining, and other domestic purposes, but not for the purpose of sale

or commerce, and that the second of said acts (20 Stat., 89), as amended by the act of 1892, relates to all nonmineral lands of the United States in all public-land States and prohibits the cutting of timber on such lands, except as therein otherwise provided. 24-167

27. The authority and permission to fell and remove timber and trees, conferred by the act of June 3, 1878 (20 Stat., 88), extends only to the public mineral lands susceptible of mineral entry alone. The act does not, as to such lands, secure to miners of the vicinity an exclusive right of timber appropriation. If any given tract is in fact mineral in character, title to the land, together with the timber thereon, may be acquired under the mining laws; and if vacant and nonmineral, valuable chiefly for timber, but unfit for cultivation, containing no mining or other improvements, it may be purchased upon the conditions imposed and as provided by the act of June 3, 1878 (20 Stat., 89). 35-90

28. A foreign corporation, although doing business solely within the State of Idaho, and having complied with the requirements of the State statutes, is not a resident of the State within the meaning of the act of June 3, 1878, authorizing *bona fide* "residents" of the States and Territories therein named to cut timber for certain purposes from the public mineral lands. 39-80

29. The act of July 1, 1898, conferred upon residents of Idaho the same right to cut and remove timber from lands within the limits prescribed by said act, in Wyoming, as was enjoyed by the residents of Wyoming under the acts of March 3, 1891, and June 4, 1897. 31-412

30. The act of June 3, 1878 (20 Stat., 88), with respect to timber cutting on mineral lands, applies to the States of Colorado, Nevada, Montana, Idaho, Wyoming, North Dakota, South Dakota, and Utah, the Territories of New Mexico and Arizona, and all other mineral districts of the United States. 29-349

31. The act of June 3, 1878, authorizing the cutting of timber on public mineral lands, is confined to the States and Territories expressly enumerated therein. 38-75

32. Object of the act of June 3, 1878, to enable the inhabitants of the States and Territories to appropriate timber from land not subject to the settlement laws. 1-600

33. Is not permitted by the act of 1878 for purposes of transportation beyond the State or Territory. 1-597

34. Mineral districts outside of the States named are within the terms of the act of 1878. 1-600, 616

35. Authorized by act of 1878 for any use within the State (or Territory) for the comfort or convenience of its people. 1-597, 602, 618

36. The act of 1878 permits sale of timber within the State for domestic uses. 1-597

37. Section 4, act of June 3, 1878, accords to the agriculturist and miner permission to use timber from nonmineral land. 1-600, 602, 616, 618

38. The act of 1878 authorizes, on mineral lands of the United States for domestic uses. 1-597

39. The act of 1878 provides for the use of timber in mining operations. 1-597, 614

40. Cut prior to act of June 3, 1878, and such as by said act would be lawful after said date; proceedings will not be instituted. 2-823

41. Miners and others inhabiting mining districts may cut or employ others to cut timber from mineral lands for domestic use. 2-823

42. Where coal suitable for fuel exists in the neighborhood, timber for fuel should not be cut by a mining company. 2-827

43. Coal lands are not mineral lands within the meaning of the act of June 3, 1878. 2-827

44. Departmental decision of May 25, 1882 (1 L. D., 597), relates only to public mineral lands. 1-599

45. Allowed for Government use under a contract to supply a military post. 1-613

46. Restricted to trees not less than 8 inches in diameter. 1-602

47. Removal of timber from land covered by homestead entry or preemption filing not permitted except for purposes of improvement or other domestic use. 1-596, 599, 600, 604, 606

48. Until homestead entry is finally perfected the land belongs to the Government; the settler may use the timber on the land for fencing or other needful purposes; a prior occupant has no right to rails or to other timber cut upon it.

2-815

49. Where the homestead settler cut on his land and sold certain posts and railroad ties under the supposition that he had a legal right to do so, and where it appears that he has taken and is holding his claim in good faith, the infraction of the rule against such timber cutting will be overlooked.

2-815

50. A settler on unsurveyed land intending to make it a home and to take it under the settlement laws when surveyed is justified in doing whatever clearing is necessary to put in a crop, and may cut and sell the timber to aid him in so doing, or may sell timber for the support of his family while clearing the land and putting in a crop.

2-817

51. The action of a homesteader in cutting and selling timber growing on the land covered by his entry should not be held sufficient to justify cancellation of the entry, on the ground of fraudulent intent in making the same, if the entryman is actually residing on the land and apparently expending the proceeds of the timber in the permanent improvement of his claim.

14-454

52. Hereafter (Dec. 7, 1883) special agents will make no report of timber cutting by homesteaders or preemptors on their claims unless they find the entry to be fraudulent (cases suggested), or unless it be conclusively established that the timber was not cut for clearing the land or for other legitimate purposes.

2-819

53. *Bona fide* settler may dispose of the down and fallen timber on his claim for improvements and support while perfecting title.

3-63

54. Down timber on the public lands may not be appropriated to private use.

3-124

55. Actual settler on unsurveyed land may use down timber in the support of his improvements.

3-137

56. Not permitted within limits of unconfirmed private claim.

1-621

57. Rights within an unconfirmed private claim the same as recognized in a homesteader.

1-622

58. Locator of scrip, until title has passed, may not remove timber except for improvement.

1-626

59. Use of waste timber accorded to entryman.

1-603

60. Indian allottee no authority to use timber except for improvement, etc.

1-608

61. Indians may not lawfully cut timber from selections not approved by the department, nor from approved selections, except for the purpose of improving the land.

2-821

62. For railroad construction. Circular of March 3, 1883.

1-699

63. In construction of railroad, timber may be taken from any of the public lands in the vicinity.

1-610

64. Agent of railroad company may hire men to cut ties, but may not sell to other parties.

1-610

65. Railroad companies to be supplied under contract.

1-612

66. Timber may not be taken from private claim for construction purposes under act of March 3, 1875.

1-622

67. Authorized in the construction of telegraph line by duly organized and qualified company.

1-625

68. Rejected lumber, if from mineral land, may be sold to miners and settlers.

1-612

69. Authorized in construction of railroad ceases on completion of the road.

1-609

70. Timber taken under act of March 3, 1875, for purposes of construction only.

6-449

71. Timber taken under the act of March 3, 1875, must be used in construction of road adjacent to the lands from which the timber is taken.

6-449

72. Use of timber for construction purposes limited to timber taken from adjacent lands.

4-23, 65; 7-541; 8-41

73. Right of railroad company to use timber in the construction of depots, etc.

4-65

74. Agents of railroad companies to show authority before cutting timber.

4-24

75. Surplus or refuse timber cut (from mineral lands of the United States by a timber agent) for railroad construction may not be exported from the State or Territory. 2-811

76. An agent cutting timber for railroad purposes is not entitled to the surplus or refuse timber cut from public lands, mineral or otherwise, without paying stumpage value for it. 2-814

77. Permits to cut timber within the primary limits of the Northern Pacific grant will not be issued prior to an official survey of the lands. 25-278

78. Permits will not be issued under section 8, act of March 3, 1891, to cut timber from unsurveyed lands within the primary limits of the Northern Pacific grant in the absence of a showing that the land is mineral. 14-126

79. Permission for, under the act of March 3, 1891, on unsurveyed lands within the indemnity limits of a railroad grant, may be given, subject to the condition that such permit shall become inoperative as to any tract that may be thereafter selected by the company. 18-74

80. The sale of timber on unreserved public lands is not authorized by the act of March 3, 1891 (26 Stat., 1093). 29-322

81. A permit to cut timber obtained without due advertisement, as required by departmental regulations, and substantially changed by erasures and interlineations after the order therefor was granted, should be revoked. 16-363

82. Permission to place portable sawmills in the vicinity of dead and down timber, cut under the provisions of the act of June 7, 1897, for the purpose of manufacturing such timber into lumber, may be granted, where the applicant enters into a contract in the form prescribed by the regulations of September 28, 1897, and submits proof as to the present impracticability of marketing the timber. 26-86

83. Applications for permission to cut timber should not embrace above one quarter section; and no applicant will be accorded a second permit unless it satisfactorily appears that a most urgent necessity exists therefor. 24-504

84. Applications for more than a second permit, by the same applicant, to cut tim-

ber from the public lands will not be considered by the department. 25-333

85. There is nothing in the act of July 5, 1884, providing for the disposition of lands in abandoned military reservations, authorizing the disposition of the timber growing upon any such reservation, separate and apart from the lands. 33-413

86. The provisions of the act of March 3, 1891, authorizing the use of timber on nonmineral public lands, have no application to lands in abandoned military reservations subject to disposition under the act of July 5, 1884. 33-413

87. The provisions of section 8, act of March 3, 1891, as amended, conferring upon the residents of certain States and Territories authority to cut timber on the public lands for agricultural, mining, manufacturing, or domestic purposes, contemplate the cutting and use of timber for smelting purposes. 34-78

88. Cities and counties are "residents" of the State in which they are located, within the meaning of section 8, act of March 3, 1891, as amended, conferring upon the residents of certain States and Territories authority to cut timber on the public lands for agricultural, mining, manufacturing, or domestic purposes. 34-112

89. Timber used by cities for constructing electric-light plants and building bridges, and by counties for building bridges and constructing flumes across the county roads, is used for "domestic purposes" within the meaning of section 8, act of March 3, 1891, as amended. 34-112

90. The provision in section 4, act of June 3, 1878, that nothing contained in said act shall prevent "the taking of timber for the use of the United States," furnishes no authority to permit the cutting of timber from the public lands for construction work in connection with the Fort Hall Indian Reservation irrigation project, provided for by act of March 1, 1907. 36-539

TIMBERLAND.

See ALIENATION, IX; APPLICATION, VIII; CONTEST, XV; RESERVATION, IV; TIMBER AND STONE ACT.

TIMBER TRESPASS.

See RIGHT OF WAY, 13, 40-45; TIMBER CUTTING.

- I. Generally.
- II. Railroad Limits.
- III. Purchaser.
- IV. Legal Proceedings.
- V. Compromise.
- VI. Condonation.

I. Generally.

1. By millmen, entrymen, etc. Instructions of October 24, 1881. 1-701
2. Measure of damages for. Circular of March 1, 1883. 1-695
3. Circular of August 5, 1886. 5-129
4. On the public domain. Circular of May 7, 1886. 4-521
5. The Government may protect its property from trespass the same as a private person. 4-392
6. General powers of the department, with respect to the public land extends to the protection of the timber growing thereon. 5-240
7. Unsurveyed lands will be protected from trespass. 4-65
8. A homestead entry does not authorize the entryman to dispose of the timber for any purpose inconsistent with the character of the entry. 5-390
9. Anyone who unlawfully cuts timber on the public lands, hires others to do so, or in any way encourages or promotes the same is liable therefor. 1-619
10. Committed in boxing trees for turpentine. 1-607; 5-389
11. Damages from "boxing" for turpentine to include injuries present and prospective. 4-1
12. Boxing and chipping trees for turpentine on unperfected homestead entries constitutes a trespass. 36-302
13. Committed upon public lands formed by accretion subjects the offender to liability. 1-596
14. Will not be excused when by reasonable diligence the ownership of the land might have been learned. 3-346
15. Neither railroad companies nor settlers may take timber from school lands. 1-609

16. On school lands in the Territories prosecuted. 4-392

17. Unlawful for millmen to cut timber from public nonmineral land for exportation. 1-602

18. Fort Cameron, Utah, is abandoned, but not yet restored to the public domain; timber cutting on such reservations is within the jurisdiction of the Land Department; timber cut must be released to the United States. 2-822

19. A homesteader who by mistake, resided and cut timber without his lines, and over more land than an entry could have covered may amend his entry so as to include the land he resided on, and so as to subject the Government to the least loss; neither he nor those who bought the timber from him should be prosecuted. 2-808

20. So long as the lands are occupied in good faith under the preemption law the duty of protecting the timber does not rest on the Government; otherwise where the land has been fraudulently obtained as a preemption or homestead. 2-810

21. Upon land within the entry of another does not concern the Government. 3-421

22. On land covered by preemption entry not inquired into. 4-467

23. It is not an act of trespass for a homesteader to remove timber from his land in the preparation of the same for cultivation, nor should his vendee be held liable on a proposition of settlement therefor. 20-238

24. In all cases of innocent trespass, where timber has been cut from lands of the United States, whether the timber so cut has been converted by the trespasser or the innocent vendee of such trespasser, or whether it has been allowed to remain on the land where cut, the measure of damages should be the value of the timber after it has been severed from the soil and not its stumpage or standing value. 40-518

II. Railroad Limits.

25. The company (Northern Pacific) may not sell the timber on land within its indemnity limits which has not been selected; a selection, to become effective

on title, needs the approval of the department. 2-802, 819

26. It is the duty of the Government to protect the timber upon all the lands within the unsurveyed granted limits of the railroad (Northern Pacific). 2-828

27. Right of recovery as against a railroad company for timber taken from odd sections within indemnity limits not defeated by a subsequent selection of the lands. 8-359

28. Railroad company not liable for, on selected lands the title to which appears to be in said company. 5-511

29. Not permitted upon unearned odd-numbered sections within a railroad grant. 4-58

30. Cutting timber, for the purpose of speculation, from land within the forfeited limits of the M. H. & O. R. R. Co., and in controversy between cash purchasers and actual settlers, should not be permitted pending determination of the legal status of the land. 9-542

III. Purchaser.

31. The owner of stolen property may reclaim it or demand full value from the purchaser notwithstanding the fact that the purchaser had bought it in good faith and had paid full value for it. 2-837

32. A cut the timber and converted it into lumber, which he sold to B; B sold it to C, who was ignorant of the trespass; held that B and C may be held jointly responsible for the value as lumber. 2-835

33. Purchasers of public timber must pay its stumpage value in case of unintentional trespass, but the full value where the trespass was willful. 2-839

34. Where certain mill companies procured ignorant and irresponsible men to do the cutting, suits should be brought against the millmen. 2-840

35. A purchaser who induced the trespass must pay the purchase price of the logs. 2-841

IV. Legal Proceedings.

36. Must not be instituted against alleged timber depredators unless directed by the Attorney General or until the special timber agent has been so instructed

by the Land Department; but in cases of emergency, where immediate action is necessary to protect the Government, he may apply to the United States attorney to institute proceedings. 2-841

37. The United States may sue for the value of timber unlawfully cut. 1-607

38. Cut before title to the tract passed from the Government is not part of the realty and does not pass with it; its value may afterwards be sued for by the Government. 2-776

39. Action for, may be maintained subsequently to the sale of the land to other parties. 1-620

40. Action for, not advised as against a railroad company in whom title appears to vest through indemnity selection. 6-190

41. The United States will not prosecute for, committed on railroad lands. 1-611

42. Suits, civil and criminal, advised for, on land withdrawn under railway grant. 4-487

43. Civil and criminal proceedings advised where timber was taken by a railroad company prior to application for right-of-way privileges, and not for the purposes contemplated by law. 8-374

44. Where the trespass is on an additional homestead claim the settler who fully complied with the law in his original entry has exclusive right to the timber and must himself bring action in the local courts. 2-810

45. For trespass committed during the absence of the entryman, civil and criminal proceedings recommended. 3-2

46. A trespasser on entered land is subject to both the suit of the entryman and the Government. 3-142

47. Suit advised in case of entries made through conspiracy for the purpose of securing the timber unlawfully. 4-469

48. The locator of a mining claim can prosecute for, in his own right. 1-615

49. "Boxing" pine trees for the purpose of securing turpentine is an indictable offense. 5-389

50. Action will not lie for timber cutting on land within the forest reservations created by the acts of September 25 and October 1, 1890, where such lands are covered by final entries made prior to the withdrawal under said acts. 12-83

51. Persons who have filed, for lands embraced within the forest reservations created by the acts of September 25 and October 1, 1890, and are cutting timber thereon are trespassers and should be removed. 12-83

52. Homesteaders within the reservations created by the acts of September 25 and October 1, 1890, who have not perfected title may be restrained from unlawfully removing the timber until the validity of their entries can be determined. 12-83

53. Under the proviso to section 4, act of June 3, 1878, action will not lie for timber cut from unsurveyed land and used by one in the improvement of his own land, and under the act of March 3, 1891, the fact of such use may be set up in defense to any civil or criminal action. 12-246

V. Compromise.

54. A trespass that is not willful may be settled by payment of reasonable amount. 3-348

55. The department is authorized to receive the amount found due on account of depredation. 5-240

56. The Secretary of the Interior is authorized to make compromise for, but no authority to release from liability without compensation. 6-725

57. There is no authority in the department to accept in settlement of a, an amount less than that found due the Government. 23-199

58. Agent not authorized to settle for, or receive money in settlement. 1-613, 625

59. Duty of special agents in determining amounts due for. 5-240

60. The settlement of the claim against Coe and Carter did not include trespass committed by their subcontractors. 6-725

61. Persons settling for, should pay keeper's charges *pro rata* prior to release of the timber. 3-4

62. Where the trespasser was misled as to the character of the land and his rights the offer of settlement may be accepted. 3-133

63. Where land was in a mining region, though not mineral, and the timber was

used in building a smelting furnace and a new town, the lumber company's offer of \$1.25 per 1,000 feet of sawed lumber, its value in the tree, may be accepted. 2-824

64. Where the timber was cut on coal lands under the mistaken belief that they were open to such cutting, a proposition to pay stumpage rate of 75 cents per thousand feet of lumber may be accepted. 2-828

65. For timber cut by a homesteader from his claim, which he abandons as soon as the cutting is done, the purchaser may settle by paying the purchase price. 3-1

66. Stumpage for timber cut on land within homestead entry belongs to the Government. 1-624

67. Proposition of heirs to settle for trespass committed by entryman accepted. 3-349

68. In the settlement of an unintentional trespass, the value of the timber at the time of its taking, or if it has been converted into another form, its then value, less what the labor and expense of the trespasser have added thereto, is the proper rule of damages. 20-238

69. The fact that an unintentional trespasser, in order to avoid prosecution, has offered a larger sum in settlement than that required under the rule adopted by the department, is no reason why he should be held to such proposition, where it does not appear that he was acquainted with said rule.. 20-238

VI. Condonation.

70. Section 1, act of June 15, 1880, provides that persons who committed trespasses on the public lands not mineral prior to March 1, 1879, may secure themselves against criminal and civil proceedings by purchasing the lands at the Government price. 2-829

71. The parties committed the trespass in November and December, 1877, were sued civilly, and on compromise in April, 1880, the suits were withdrawn; on November 9, 1880, they applied to purchase the land; held that as they were criminally liable at date of application, which was within three years from date of the offense (section 1046, R. S., and act of

April 13, 1876), they were authorized to purchase the land. 2-829

72. The trespasses were committed from 1870 to 1878, the land being then and now unsurveyed (California); on June 4, 1883, the trespasser offered to purchase the land under the act of June 3, 1878, which in terms applies to surveyed lands; held that the facts bring the case within the remedy of the act of June 15, 1880; that the delay in purchasing caused by the want of a survey does not render the law inapplicable when a survey is made, and that he should be allowed to have a survey under the special deposit system and to pay for the land under whichever of these laws is applicable. 2-831

73. Where one mistakenly and, as alleged, after reasonable inquiry deemed the land not public, and buying a "possessory timber claim" on it, cut timber in 1880 and 1881, he may settle by purchasing the land. 2-833

74. Where the trespasser purchases but part of the land trespassed on he is liable for the depredations on the remainder of them; if the purchase is made by other parties, his liability still remains. 2-832

75. The act of June 15, 1880, does not embrace within its intent cases of, without color of excuse, on lands not purchasable nor open to entry. 6-725

76. The entry of unoffered lands not authorized under the first section of the act of June 15, 1880. 6-725, 738

77. Parties seeking the benefit of the act of June 15, 1880, must affirmatively show themselves entitled thereto. 6-738

78. No new privilege of entry granted by section 1, act of June 15, 1880, though the effect of patent after issue is enlarged thereby. 6-725, 738

79. The fact of trespass does not, under the act of June 15, 1880, give the trespasser the right to purchase lands otherwise excluded from sale. 6-725, 738

80. Section 1 of the act of June 15, 1880, relieves (1) from criminal liability in case of subsequent entry, and (2) settlers and certain others from civil liability. 6-738

81. Subsequent purchase from the State of the land will not excuse trespass committed thereon. 3-266

82. Trespass not excused by subsequent entry. 3-415

83. Homestead entry for the purpose of obtaining the timber will not constitute a defense in suit for trespass. 3-542

TOLL ROAD.

See RIGHT OF WAY, IV.

TOWN LOTS.

See TOWNSITE.

I. Generally.

II. Oklahoma.

I. Generally.

1. Claimants of, are not required to give notice of intention to make entry, by publication under act of March 3, 1879. 1-501

2. Notice to adverse claimants may be by personal service, or through the mails. 1-501

3. Filing not necessary to entry under section 2382, R. S. 4-337

4. Declaratory statements are not required to be filed within three months after settlement. 1-501

5. The term "actual settler" in section 2382, R. S., means actual resident; when one or two lots are entered, the entryman must actually reside on one lot. 2-628; 4-337

6. Right of purchase restricted to the lot actually settled upon and one additional on which the settler has improvements. 1-502; 4-337

7. Additional entry under section 2382, R. S., allowed on residence shown upon another lot. 4-337; 5-56

8. Purchase under section 2382, R. S., of town lots confined to settlers having the qualifications of a preemptor. 1-502

9. The actual settler upon a lot has the preferred right of purchase. 5-56

10. Land within the incorporated limits of a town, which it is not entitled to enter by reason of its population, and which is not actually settled upon, inhabited and improved, and used for business or municipal purposes, is subject to preemption, by virtue of section 1, act of March 3, 1877. 1-497

11. After town lots have been appraised and offered for sale under section 2381, R. S., there remains no authority for re-appraisal, or reduction of the price fixed originally. 19-308

12. There is no authority for the disposition of town lots at private entry, under section 2381, R. S., until after public offering thereof. 21-425

13. Lands laid off and offered at public sale in accordance with the provisions of the special act of March 2, 1833, establishing the town of St. Marks, Fla., are thereby removed from the operation of the general land laws, and are subject to private sale, as provided in section 2 of said act. 22-15

14. In the interest of the Government and intending purchasers a sale of, under sections 2380-2381, R. S., may properly take place at the townsite, under the personal charge of the local officers. 24-405

15. The right to a deed for a town lot, in the case of a townsite entry in Alaska, made under the act of March 3, 1891, depends upon the claim and occupancy existing at the date of the townsite entry. 29-357

16. Under section 17, act of June 21, 1906, a married woman, a *bona fide* resident, is entitled to enter an "additional lot" of which she was in possession and upon which she had substantial and permanent improvements, notwithstanding her husband may have theretofore made entry of both a residence and an additional lot. 39-516

17. The provision in the act of June 21, 1906, giving townsite settlers in certain unsurveyed townsites in the Flathead Indian Reservation a preference right to purchase, after survey, at the appraised value, a residence lot and a business lot on which they have substantial and permanent improvements, contemplates improvements, in keeping with pioneer town settlements. 40-596

II. Oklahoma.

18. Circular of July 10, 1890. 11-24

19. Circular of May 8, 1891, amending paragraphs 13 and 23 of the regulations issued June 18, 1890. 12-612

20. Instructions of March 31, 1893, to trustees of, as to the disposition of deeds for lots. 16-341

21. Instructions concerning the recognition of certificates issued by townsite companies in Oklahoma. 15-270

22. In contest cases arising in the allotment of Oklahoma townsite lots rule 42 is modified. Circular order of August 18, 1890. 12-186

23. Rules of practice modified in Oklahoma cases. Instructions of August 21, 1890. 12-187

24. Sale of unclaimed lots in Oklahoma; instructions of April 18, 1894. 18-391

25. Regulations as to deposits to cover costs in contests involving town lots in Oklahoma; instructions of April 16, 1894. 18-391

26. Under the rules of procedure adopted for the disposition of claims presented before townsite trustees, an appeal from the commissioner must be filed within 10 days from notice of the decision. 13-268

27. Under a proper construction of the act of May 14, 1890, the Secretary of the Interior is authorized to allow appeals from the decisions of the townsite trustees to the Commissioner of the General Land Office, even though said act does not expressly provide for an appeal in such cases. 13-9

28. The failure of an applicant for town lots to properly present his claim before the trustees will not preclude the amendment of his application nor the subsequent initiation of contests against adverse claimants. 13-263

29. Application for town lots in proceedings before townsite trustees should set forth specifically the claim of the applicant and show *prima facie* that he is entitled to the lots in question. 13-263

30. An applicant for a town lot will not be permitted to take land that has been previously surveyed and set apart by the township authorities for a public purpose. 13-268

31. The survey of a townsite and approval of the plat effectually divests all prior settlement rights asserted by lot claimants to land that may be included in streets and alleys, and no authority

exists in the trustees to deed land thus dedicated to the public use. 22-505

32. The approved survey of a townsite showing a reservation for the purpose of a public park precludes the allowance of a town-lot entry of any part of the land so reserved. 20-524

33. May be reserved for public use as sites for public buildings where the necessity therefor is duly shown. 20-268

34. Land embraced within an approved location of a railroad right of way is not subject to subsequent appropriations as a. 21-482

35. The trustees have no authority to make a deed to a lot before the tract has been surveyed and platted, nor are they authorized to make a deed to any portion of a street or alley, or to execute deeds to lots otherwise than as they are surveyed and platted. 20-542

36. The law applicable to, contemplates a survey of the land into lots and blocks before deeds may be given. 25-313

37. Townsite trustees should not execute deeds for fractional parts of a, but for the protection of separate interests therein may, on joint application, deed to the several parties jointly the entire lot according to their respective holdings. 22-102

38. Adverse occupants in good faith of a, at the date of a townsite entry may be treated, in cases where priority of settlement does not determine their rights, as joint applicants and receive a deed jointly, according to their respective holdings, though such occupants may have filed separate and adverse applications. 24-565

39. While it is lawful to issue a joint deed to a, for the protection of separate interests such recognition should not be accorded an adverse occupant whose possession is secured through fraud and violence. 22-505

40. A lease or contract from a townsite company will not support a claim for a, where it does not appear that said company has any right to convey said lot, or actual interest therein. 20-269

41. Claims based upon conveyances from a homesteader, who commutes his entry

for townsite purposes, terminate necessarily with the cancellation of the entry. 20-267, 269

42. A deed for a, can not be secured by payment of the taxes thereon. 20-269

43. In the matter of citizenship, as an element of qualification to own and settle upon a, in Oklahoma, any citizen of the United States is so qualified. 21-98

44. A purchaser of a possessory interest in a, who is at such time and at the date of the townsite entry receiver of a land office, is disqualified thereby from acquiring title to said lot. 20-310

45. One who enters the Territory of Oklahoma prior to the time fixed therefor is thereby disqualified as a town-lot claimant in said Territory. 20-268

46. One who is within the Territory at the hour of the opening thereof, and occupying at such time a tract of land, is disqualified thereby to enter said land as a, even though within said Territory by lawful authority. 20-480

47. The presence of an agent in the Territory at the hour of opening will not operate as a disqualification if he did not thereby acquire an advantage for his principal over other applicants. 21-522

48. The right of an assignee claiming through an occupant, who has complied with the law, to receive a deed is not affected by the fact that the application of such assignee is in the interest of one who was disqualified as an original lot occupant on account of being inside the Territory at the hour of opening. 23-384

49. Persons entering the Territory of Oklahoma prior to the time fixed therefor are disqualified as applicants for; and the improvement, or occupancy of such a person, or a certificate of right issued to him, invests him with no right. 21-84

50. A certificate of right issued to a claimant by the municipal authorities puts an adverse claimant on his defense as to priority of occupation, but is not conclusive. (Oklahoma.) 18-547

51. The claim of one who holds a certificate of occupancy will not be recognized where it is apparent that his occupancy is a mere pretense. 20-267

52. A certificate of right, issued to a claimant by the municipal authorities, is

prima facie evidence only of the claimant's right, where there is an adverse claim at the time the case is considered by the townsite board. 19-363; 24-565

53. A duly verified and recorded application for the registration of a claim for a, wherein occupancy and improvement are alleged, constitutes such "paper evidence" of occupancy as the statute contemplates, and may be accepted for such purpose in the absence of any adverse claim or protest. 22-115

54. An "occupant," as the word is used in the act of May 14, 1890, means one who is in open, exclusive, and adverse possession, under a claim of ownership, and the possession in such case must be notorious and unequivocal. 19-290

55. The occupancy of a, may be maintained through the possession and actual occupancy of a tenant. 21-98; 22-177

56. The claimant of a town lot is not required to maintain an actual personal residence as in case of a homestead; it is sufficient if he makes a settlement and improvements thereon, though the improvements be occupied by another as the tenant of the claimant. 15-210

57. Occupancy of a, as the tenant of another at the date of a townsite entry confers no right to a deed upon such occupant. 23-196

58. The possession of a, by a tenant is the possession of his lessor, and entitles the assignee of such lessor to a deed. 22-121

59. The right to acquire title to a, in Oklahoma, under the act of May 14, 1890, is dependent upon occupancy, not residence, and such occupancy may be begun by an agent, and maintained thereafter through a tenant. 21-522

60. The occupancy of a, by the agents of a town-site company confers no right that will defeat an adverse occupant of the remainder of said lot who is claiming the whole of it. 24-457

61. The possessory right acquired by the first occupant of a, is a proper subject of sale and transfer, and the delivery of actual possession to the purchaser before the prior occupant leaves the lot renders the date of his occupancy available to the

purchaser if he continues his occupancy until the date of the townsite entry. 22-649

62. The occupancy required by the act of 1890 must be in good faith, either for the purpose of residence, or for conducting some sort of legitimate business thereon. 19-290

63. After occupancy once begins, and actual possession of the lot is acquired, it must be maintained up to the date of entry by the townsite trustees. 19-290; 20-480; 23-196

64. Actual occupancy of a, with valuable improvements thereon, at the date of the townsite entry, entitles the occupant to a deed. 20-269

65. May be taken either for business or residence purposes; and it is not a material fact that the claimant owns other lots and intends all of them together as a homestead, and is using the lot applied for as a garden. 20-495

66. The occupancy of a, as the tenant at will of another occupant does not invest such tenant with any right to a deed as against his landlord. 20-264

67. No right to a, can be based upon a wrongful possession, acquired in open violation of another's occupancy. 20-265; 24-558

68. One who takes possession of a, by force or fraud, or maintains occupancy as the tenant of another, is not thereby invested with a right to a deed, as against either his landlord or the rightful claimant. 20-542

69. As between two claimants for a, where one of the parties establishes and maintains his occupancy in accordance with the voluntary proposition of the other, such occupancy should be recognized as affording a proper basis of title. 20-483

70. As against the claim of one living in open adverse possession of a, another claimant, who has not openly asserted his claim, can not be heard to say that said adverse occupant was in fact the tenant of a third party. 22-54

71. There can be no such thing as constructive occupancy of a town lot. The occupancy required is an actual bodily presence of the claimant, or some one for

him, or a purpose to enjoy, united with or manifested by such visible acts, improvements, or inclosures as will give to the claimant the exclusive enjoyment of the possession thereof. 19-363

72. Improvement and occupancy of a, subsequent to the date of the entry do not entitle the claimant to a deed. 20-202

73. The continuity of the occupancy of a town lot is not broken by absences caused by the illness of the claimant and the condition of his family. 19-266

74. The right of a claimant is not defeated by his failure to maintain actual possession and occupancy, where such failure is due to threats of force and armed violence. 20-265

75. The right of a claimant, whose failure to maintain actual possession and occupancy is due to armed violence, will not be defeated by the intervening occupancy of an adverse claimant who acquires title with notice of the defect therein. 22-31

76. Failure to improve a lot may be excused when due to the unwarranted interference of the municipal authorities of the town. 18-547

77. A claimant who vacates a lot in obedience to an award made by a citizens' committee can not be held by such action to have voluntarily abandoned his claim to said lot. 20-425

78. An inconspicuous stake neither on a corner nor line of a, is not such evidence of settlement and appropriation thereof as to defeat a subsequent settlement right acquired without actual notice of the prior settlement claim. 22-505

79. The law does not prescribe the value of the improvements that town-lot settlers are required to make. Occupancy in good faith for purposes of residence or business is the test, and in passing upon the character and value of improvements, it is proper to consider both the financial and physical ability of the claimant. 20-252

80. A portable business stand established in the street in front of a, is not settlement upon, or occupancy of said lot. 21-84

81. The possession and occupancy of the back part of a, entitles the occupant to a deed for the whole lot, in the absence of any qualified prior occupant of said lot. 21-84

82. The occupancy and improvement of a, does not give the occupant an interest therein that can be reached by attachment. 20-264

83. A deed to a town lot issued by a townsite board in obedience to a judicial order terminates departmental jurisdiction in the matter, and the case, therefore, being finally disposed of, the money deposited by the successful party should be returned. 18-602

84. The department has no interest in determining how cost levied in judicial proceedings, instituted to secure title to a town lot, shall be paid. 18-602

85. The board, in contest proceedings, may properly require from claimants a deposit to cover the cost and expenses of such proceedings. 20-202

86. An applicant for a deed to a, in Oklahoma is not entitled to receive credit for an unreturned deposit, due such applicant and made to defray the costs of a contest, as against the assessment levied on said lot by the townsite trustees. 26-637

87. The municipality may become a party to a contest between applicants for a, with a view to the assertion of its own rights under section 4, act of May 14, 1890. 23-196

TOWNSHIP PLAT.

See FILING, 1; SURVEY, I.

1. Instructions with respect to notice of filing of township plat for lands in national forests. 39-446

TOWNSITE.

See ALASKAN LAND, 2-7, 39; FINAL PROOF, 220; MINING CLAIM, 34-38, 723, 920; PATENT, 59-61, 66-67; TOWN LOTS.

I. Generally.

II. Oklahoma.

I. Generally.

1. Circular of July 9, 1886 (approved November 5, 1886), as to manner of acquiring title to. 5-265

2. Circular of June 12, 1903, relating to manner of acquiring title to townsites, cemeteries, and parks on public lands. 32-156

3. General circular of August 7, 1909, concerning townsites, parks, and cemeteries. 38-92

4. Instructions of January 6, 1904, relative to townsite proof under sections 2387 to 2389, R. S. 32-481

5. Entries in Alaska, section 24, regulations of June 3, 1891, amended. 22-119

6. Entry in Alaska; regulations of June 3, 1891, with respect to appeal from trustee, amended. 25-323

7. Paragraph 24, regulations of June 3, 1891, as to entries in Alaska, amended. 27-560

8. Regulations of August 1, 1904, concerning townsites in Alaska. 33-163

9. Paragraph 13 of regulations of August 1, 1904, relative to townsites in Alaska, amended. 34-71

10. Instructions of August 8, 1907, relative to sale of lots in townsites within Huntley irrigation project. 36-49

11. Declaratory statement not required except to save the rights of the town in the event of a public sale. 1-503

12. Laws only refer to location to towns on public land. 1-498; 4-556

13. Claims for, are in the nature of preemptions. 3-71; 4-54

14. Actual settlement for, is notice to preemption and homestead settlers. 3-30

15. Lands selected for, are not subject to agricultural entry. 13-143, 399, 404, 562

16. Land included within the corporate limits of a town is not subject to preemption though in fact not platted nor occupied for purposes of trade and business. 15-124

17. Land occupied as a townsite, whether application to enter the same has been made on behalf of the occupants or not, is not subject to entry under section 2306, R. S. 32-374

18. The right of, acting under territorial legislation, to include certain lands within corporate limits for municipal purposes, can not be recognized if such lands were in fact at such time not subject to such appropriation. 25-249

19. The inclusion of a part of an Indian reservation, established by treaty, within the corporate limits of a city, under authority of a territorial statute, is beyond

the legislative power of the Territory and without effect. 28-151

20. Lands within an abandoned military reservation opened to disposal under the act of August 23, 1894, are subject to entry under the provisions of section 2387, R. S., the lands when so entered to be paid for at the appraised value. 29-501

21. Land embraced within a claimed, not subject to settlement even though not actually occupied for the purposes of a. 15-324

22. Claim of, set up to defeat a homestead will not be recognized where the land was not occupied for townsite purposes at date of the homestead entry. 20-367

23. The extension of the corporate limits of a town to include land that can not be taken as a, and is not occupied for purposes of trade and business or laid out in streets and blocks, does not operate to segregate the land from the public domain. 16-127, 397

24. The incorporation of a town with limits in excess of 2,560 acres will not bar preemption entry within said limits on land not actually settled upon and used for business and municipal purposes. 1-497; 3-77

25. Settlement for, must rest on the principles applicable to other claims so begun. 3-431

26. Informal settlement subsequently abandoned does not reserve land from homestead entry. 3-282; 5-180

27. Abandoned, may be taken up by the townsite settlers under the homestead law. 21-104

28. Location of, under State laws, on land temporarily appropriated is a bar to subsequent homestead entry. 5-475

29. Occupation of land within an Indian reservation for townsite purposes confers no right. 3-356

30. Land reserved from preemption settlement is equally reserved from townsite settlement. 3-360

31. Selection of lands for, must be with authority. 3-432

32. Plat filed by railroad company on land withdrawn under its grant will not strengthen the claim of settlers under the public-land laws. 4-584

33. As between a townsite claimant and a preemtor, their rights begin with their initiatory acts. 3-358

34. Lands settled upon and occupied as, should be entered for such purpose to protect the interests of those concerned. 13-665

35. That the survey of a claimed townsite embraces a certain area and a portion thereof is occupied by townsite settlers does not entitle them to enter the lands within said boundaries irrespective of the statutory limitation as to acreage. 13-327

36. The extension of a townsite survey over a school section prior to the filing of the plat of public survey confers no rights upon the townsite claimants if said section is not settled upon by said claimants prior to the official survey. 13-327

37. The right of a town to make entry with respect to acreage must be computed upon the basis of the number of occupants of the public lands. 1-500

38. An entry can not be allowed if the proof offered fails to show that the land is occupied for the purposes of trade and business or settled upon and occupied as a townsite. 26-214

39. Section 2387, R. S., provides for entry only of land upon which there is actual urban settlement, occupancy, and use, and does not contemplate that promoters of prospective towns may, with speculative intent, in advance of urban settlement and use, enter upon and partition open and unsettled public lands, with a view to establishing a town thereon. 36-85

40. In all cases, either of application to make original or additional entry, where the inhabitants of the land are less than 100 in number, it is a matter of executive discretion whether such entry will be allowed. 26-323

41. No specific number of inhabitants requisite to the right of entry. 10-208; 15-209

42. The law does not prescribe the number of acres that may be taken for a town of less than 100 inhabitants, but in the exercise of Executive discretion the limit is fixed at the legal subdivisions actually occupied. 6-675

43. The provision of section 2389, R. S., that a townsite entry "shall in its ex-

terior limits be made in conformity to the legal subdivisions of the public lands authorized by law," is mandatory, and an entry which does not so conform can not be allowed. 35-559

44. An application to make entry under section 2389, R. S., will not be allowed, where the number of *bona fide* occupants is not given, and it is not manifest that the occupants in fact desire in good faith to make such entry, and also where the application covers land apparently mineral in character and in close proximity to another town. 24-253

45. Four nonresidents can not select and reserve an entire section. 3-356

46. There is no requirement that townsite proof shall be made by persons not resident of the town, and such residence does not affect their competency to make such proof. 34-708

47. Where, upon the opening of land for townsite purposes, proceedings are promptly begun for incorporation of the town and for townsite entry by the corporate authorities, such proceedings can not be superseded by the application of the county judge to make townsite entry, as trustee, under section 2387, R. S., the provisions of that section giving preference to entry by the corporate authorities of a town and merely empowering the county judge to act for the occupants and claimants in towns which have no corporate authorities to act for them. 35-320

48. When the site for which application was made by the county judge was subsequently included within another county and the entry made by the judge of the latter county, it was allowed to stand on the agreement of the parties. 3-13

49. In proceedings to secure, section 2387, R. S., confers authority upon judge of the county court or "corporate authorities." 1-503

50. A probate judge in the Territory of Utah is the judge of a county court, and as such is the proper officer to perfect an entry for an unincorporated town in said Territory. 15-205

51. The term "judge of the county court for the county," employed in section 2387 to designate the officer authorized to make townsite entry under said section, as trustee, embraces any presiding judicial officer

of a court having jurisdiction within the county; and where any one of several officers coming within the purview of the statute is designated by the State legislature as the proper officer to make the entry, such designation is entitled to be recognized by the Land Department.

34-24

52. Entry of, by an incorporated town must be made by the corporate authorities of, duly authorized to take such action, and the official character and authority of the officer making such entry must be duly shown.

13-4

53. In the absence of incorporation the selection must be made by actual townsite settlers to exclude preemption and homestead settlement.

3-358, 433

54. Under section 11, act of March 3, 1891, attorney's fees may be included in the account of a townsite trustee, where necessary and not in excess of a just and reasonable amount.

34-287

55. Private cash entry of offered land not within corporate limits may be made for townsite without reference to the statutory limitation with respect to population.

3-30

56. Claim concluded by homesteader's final proof after due notice.

4-586

57. The cancellation of homestead entries on offered land leaves it withdrawn from private entry and subject to disposal for townsite as unoffered land.

3-30

58. Land entered under section 2387 must be paid for as though purchased by a preemptor.

4-54

59. A city founded and incorporated on private land is not entitled to make an additional entry under the act of March 3, 1877.

21-71

60. Additional entry can not be allowed to a town that holds under its former entry more land than its present population would entitle it to enter.

7-143

61. Additional entry not allowed for noncontiguous tract.

16-127

62. The right to make an additional entry only exists where the applicant has, prior thereto, made a townsite entry of public land, and is limited then to land contiguous to that embraced within the original entry.

24-526

63. The right to make an additional entry of lands that "may be occupied for

townsite purposes" can not be exercised upon lands reserved or granted for school purposes.

13-327

64. Actual occupancy of land for townsite purposes is a prerequisite to the right to make an additional townsite entry.

26-323

65. The exclusion of a portion of the land embraced within the boundaries of a townsite on the adjustment thereof to the public survey confers no right to an additional entry if vested rights are not disturbed by said adjustment.

13-327

66. The irregular allowance of a townsite entry prior to the submission of the final proof therefor does not make the entry for that reason void, but voidable only, and the defect being subsequently cured the entry must bear the date of the original action.

22-165

67. An entry may be allowed to embrace noncontiguous tracts where the original application was for contiguous lands, and the subsequent noncontiguity is caused by the exclusion of mineral lands covered by said application.

21-478

68. Proof required in entry of, and how made.

1-503

69. If land is mineral, it is subject to location only under the mining law, without reference to its relative value for townsite purposes; this ruling was changed by circular September 22, 1882.

2-717, 718

70. Procedure when the land applied for is alleged to be mineral regulated by the instructions of September 23, 1880, and October 31, 1881.

1-504

71. Conflict with mining claim as to priority of occupation and use of the surface will be left with jury of neighborhood.

4-212

72. On mineral land subject to the rights of claimants therefor.

1-556; 4-212

73. Patent for, that covers land known to be mineral in character, will not pass the right thereto.

4-556; 5-131; 29-89

74. Under a patent for, in which no portion of the surface ground is excepted from the land described therein, the departmental jurisdiction over said land terminates even though said instrument declares that no title to any mining claim shall be acquired thereby and it subsequently appears that it includes a lode

claim known to exist at the date of the townsite entry. (See 25-518.) 12-686

75. Patent issued for a. that includes a known lode claim, based on a record location made prior to the townsite entry, should be vacated by judicial proceedings so far as in conflict with said claim. (See 25-518.) 12-686

76. Hearing may be ordered with a view to judicial proceedings where it is properly shown that a patent for, covers land that was known to be valuable for mineral prior to the entry and patent. 12-513, 662

77. Patent issued for, that includes a known mining claim conveys no title to said claim; but such patent while outstanding removes the land and the title thereto from the jurisdiction of the department and precludes the issuance of a patent for said claim. (See 25-518.) 12-686

78. A patent issued under the general townsite laws, for lands embraced in an unincorporated townsite, is inoperative to convey title to any lands known to be valuable for minerals at the date of the townsite entry, or to any valid mining claim or possession held under the mining laws at the date of such entry. 32-211

79. In order to except mines or mineral lands from the operation of a townsite patent, it is not sufficient that the lands do in fact contain mineral, when the townsite patent takes effect, but they must at that time be known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them. 39-356

80. Title based upon a patent, presumptively complete, issued on a townsite entry, and remaining unchallenged for many years, should not be disturbed, in favor of a lode mining applicant, except upon the clearest proof that the conflicting area was known, at the date of the patented entry, to occupy such a status, or possess such a character, that complete title thereto can not be held to have passed thereunder. 39-356

81. No patent should be issued or entry allowed for any lode within the exterior limits of a patented townsite in the absence of a determination, as the result of a hearing had in a proceeding to which

those claiming under the townsite patent are parties, that such lode was known to exist at the time of the filing of the townsite application 39-356

82. Though a patent for, conveys no title to a known lode or mining claim, it can only be invalidated by judicial proceedings, and with a view to such action a hearing may be ordered on due showing of such lode claim within a patented townsite. (See 25-518.) 13-369

83. Patent for, can not be attacked on the ground that it embraces land "known to be valuable for mineral," if such land was not covered under existing law by a valid mining claim or possession at the date of the townsite entry, or then known to be valuable for the mineral contained therein. 18-259

84. As between parties claiming lands under the townsite and mining laws, respectively, the phrases "lands known to be valuable for minerals," or "for mineral deposits," and "known mines," or "land containing known mines," are equivalent in meaning, and no title to such lands will pass under a townsite entry if they are known to be of that character when the entry is made. 29-426

85. The issuance of patent for land known at the date of the townsite entry to contain a valuable lode claim, does not pass title to such claim, but leaves it in the United States, subject to the jurisdiction of the Land Department. 25-518; 26-144

86. Section 16, act of March 3, 1891, is not retrospective in its operation. 12-513, 662, 686

87. Entry made on mineral lands under the provisions of section 16, act of March 3, 1891, should not be allowed to include lands theretofore patented under the mining law. 29-21

88. A patent issued for a. under the provisions of section 16, act of March 3, 1891, will not disturb or impair rights under any valid mining claim or possession existing at the time of the townsite entry, or deprive the department of jurisdiction to subsequently issue patent for any such mining claim or possession on due showing of compliance with the mining law. 29-21

89. Under section 16, act of March 3, 1891, townsite entries may be made by incorporated towns and cities on mineral lands, subject to existing rights under any valid mining claim or possession, lode or placer, held under existing law. 34-102

90. Under section 16, act of March 3, 1891, a townsite entry by an incorporated town may be made upon mineral lands of the United States, subject to the limitations and conditions prescribed, and therefore such an entry, upon surveyed lands, even though the lands be mineral, should, in its exterior limits, be made in conformity to legal subdivisions, as required by section 2389, R. S. 33-542

91. Locations upon mineral lands, lawfully possessed and held under the mining laws at the date of a townsite entry embracing such locations, are within the language of section 16, act of March 3, 1891, "any valid mining claim or possession held under existing law," and can not be injuriously affected by the allowance of such entry; and the mineral claimant may, upon proper proceedings and proofs, obtain patent for his claim notwithstanding the townsite entry or the issuance of patent thereon. 34-276

92. In determining whether an alleged mineral location is a "valid mining claim or possession" within the meaning of the general townsite laws and section 16, act of March 3, 1891, the question of the character of the land is a primary one; and if the mineral claimant has had ample time and opportunity to show whether valuable mineral deposits exist on the land, and has not done so, and has not in any manner established that the location embraces mineral land under the well-settled rules of determination in cases where the character of the land is directly in issue, his location can not be held to be a valid mining claim or possession within the meaning of the law. 34-596

93. Patent for, must issue subject to right of way easements. 21-351

94. The right accorded by section 22, act of March 3, 1891, to enter as a, the tract specified therein is limited to a single entry. 14-628

95. In view of the provisions of the act of February 9, 1903, which extended the

townsite laws to the lands within the ceded limits of the Red Lake Indian Reservation and authorized their occupation for townsite purposes prior to formal opening thereof to disposition under the homestead laws, the occupation of a portion of said lands as a townsite prior to and on the date they were opened to settlement and entry, prevented the attachment of any rights on that date under a settlement with a view to acquiring title under the homestead laws, covering the same land, initiated prior to occupation of the land for townsite purposes. 34-94

II. Oklahoma.

96. Entries in Oklahoma restricted by statute. Circular of April 1, 1889. 8-336

97. Circular of July 10, 1890. 11-24

98. Circular of July 18, 1890. 11-68

99. Section 4 of the instructions of July 18, 1890, modified. 13-700

100. Regulations of November 30, 1894, provided by the Secretary of the Interior for the guidance of trustees in the execution of their trust. 19-334

101. Regulations of November 30, 1894, with respect to the commutation of homestead entries for townsite purposes, under section 22, act of May 2, 1890. 19-348

102. Compensation of trustees; see circular of October 7, 1895. 21-288

103. The act of March 2, 1889, with respect to entries under sections 2387 and 2388 does not extend to a corporation seeking to locate and enter prospective townsites. 8-425

104. Circular with respect to entries in the Territory of Oklahoma. 10-604, 666

105. The effect of the act of July 7, 1898, abolishing townsite boards in Oklahoma, is to render operative within said Territory, and the Cherokee Outlet therein, the provisions of section 2387, R. S., permitting the corporate authorities of a town, or the judge of the county court, to enter land for townsite purposes. 29-528

106. Under the act of May 14, 1890, the Secretary may allow appeals from the decisions of the townsite trustees. 13-9

107. In the disposition of claims arising before the board of trustees an appeal

from the commissioner must be filed within 10 days from notice of the decision.

13-268

108. The action of trustees may be reviewed by the Commissioner of the General Land Office under the rules governing contests before the local land offices.

25-313

109. The Attorney General will be requested to direct the proper district attorney to appear on behalf of the trustees where judicial proceedings are instituted to control their action in the disposition of title.

14-295

110. A board of trustees should not be discharged from any portion of the trust imposed upon it, until the whole purpose of the trust is accomplished, or until such time as it may be relieved entirely from its duties.

24-582

111. The transfer of a case from one board to another during the trial will not affect final action where all the evidence is before the latter at the time of its decision.

23-578

112. Money derived from the assessment of lots, and left in the hands of the trustees on the completion of their trust, should be returned in just proportion to the persons from whom it was collected.

21-52

113. In the disposition of, under the act of May 14, 1890, an additional assessment, for the legitimate purposes of the act, is authorized where such action operates uniformly upon all lots alike; but there is no authority for such an assessment where the burden falls upon the unclaimed lots alone.

24-366

114. The authority of a townsite board to levy assessments is limited to matters necessarily attendant upon the execution of the trust growing out of the allowance of the entry, and does not extend to expenses incurred by the townsite applicants prior thereto in securing the right of entry as against adverse claimants.

27-614

115. The act of May 14, 1890, empowers trustees in Oklahoma to approve surveys of, made prior thereto; and the limitation as to the acreage that may be included in a public park, under section 22, act of May 2, 1890, is not applicable to a survey so adopted.

25-313

116. A survey of a, made by the provisional authorities of a municipality, becomes operative from and after its execution and approval by said authorities, when subsequently adopted by the townsite trustees after entry.

25-313

117. The survey of a, duly approved and filed in the office of the board of trustees, will not be modified in an *ex parte* proceeding.

18-154

118. Entry by trustees is made for the benefit of occupants the same as though made under section 2389, R. S.

15-270

119. The issuance of patent to trustees is not a disposition of the Government title, but a conveyance thereof in trust, to be held under the direction of the Secretary of the Interior.

14-295; 22-367

120. Entries within the lands open to settlement on April 22, 1889, must be made through a board of trustees. Section 17, act of March 3, 1891, does not change nor repeal the acts of May 2 and May 14, 1890, in this respect.

16-74

121. Probate judges are not invested with power to make entries within the Cherokee Outlet. The provisions of the act of May 14, 1890, made applicable to said lands by the joint resolution of September 1, 1893, require the disposition of such entries through the means of townsite boards.

18-122; 24-580

122. Entry can not be allowed where it is apparent that the application is in the interest of a fraudulent speculation.

12-653

123. On the application of trustees to make entry a charge of abandonment, as against the townsite settlers, may be properly entertained, and notice to said trustees of the hearing ordered thereon is notice to lot claimants.

24-468

124. Entry in Oklahoma can not be allowed in the interest of those who entered said Territory in violation of law.

12-654

125. The law does not prescribe the number of acres that may be taken as the site of a town containing less than 100 inhabitants. In such cases the extent of the acreage is a matter of executive discretion, and is restricted to the land actually occupied for town purposes by legal subdivisions.

18-223

126. Under the act of May 14, 1890, 100 people, or more, may select 320 acres for a, although they may not, at the date of the act or selection, use each smallest legal subdivision for municipal purposes.

13-690

127. That some of the settlers violated the terms of the statute and the President's proclamation in entering upon the land does not prevent the remainder from perfecting an entry under the act of May 14, 1890.

13-404

128. An application to enter 320 acres in Oklahoma under the act of March 2, 1889, is not limited by the acreage actually occupied. The same rule as to occupancy is applicable to entries under the act of May 14, 1890.

13-404

129. An entry under the act of May 14, 1890, is for the use and benefit of the occupants of the land at the date of the entry; and priority of possession or occupancy can only be material in case of conflicting claims of occupancy existing at such time.

29-175

130. Land set apart for courthouse purposes and included in a tract patented to townsite trustees under the act of May 14, 1890, may be conveyed by the Secretary of the Interior to the person or persons having official charge of such matters on behalf of the county.

17-335

131. The Secretary is without authority to grant permission to the citizens of Alva, Okla., to erect a post-office building on lands set apart for a "courthouse site" in pursuance of the President's proclamation.

29-335

132. Townsite settlers may properly set apart a portion of the land covered by their entry for burial purposes.

18-223

133. The reservation of a lot for the purpose of erecting thereon an armory for use of a company of the Oklahoma National Guard, constitutes a reservation for "the public interest" within the meaning of section 4, act of May 14, 1890.

34-530

134. The reservation of land for park purposes is made obligatory upon townsite trustees, and the occupancy of land by townsite settlers prior to the passage of said act confers no right upon said occupants as against the reservation thereof under a survey and entry made after the passage of said act.

22-190

135. The amount of land reserved by a townsite settlement may be properly limited to the legal subdivision on which actual settlement is made where the townsite claim is for the purpose of securing an entry of lands additional to a prior townsite settlement.

23-74

136. The provisions of section 22, act of May 2, 1890, contemplate the issuance of patents for reservations within townsites directly to the municipalities, after their organization as such, and not to the townsite trustees.

22-367

137. A townsite patent issued to the board of trustees is not a final disposition of the Government title, and if such a patent erroneously embraces lands reserved for municipal uses it may be recalled for correction.

22-367

138. Land can not be taken for, that is reserved for school purposes.

13-640

139. Entry in Oklahoma under section 37, act of March 3, 1891, should not be allowed in the absence of due showing that a majority of the lot occupants or owners desire such action.

16-82

140. Entry under section 37, act of March 3, 1891, allowed without any showing as to the desire of the lot owners and occupants for such action, may stand where it appears that said owners and occupants approve the action taken.

16-82

141. A protest against the location of a, on the ground that action was taken on erroneous information will not warrant favorable consideration by the department, where said townsite is designated in the proclamation of the President and a townsite settlement has been made in accordance therewith.

19-331

142. The personal qualifications as an entryman of one who makes an entry under the act of 1891 can not be considered, as he acts only as the agent of the parties entitled to perfect their claims to lots; and in making an entry under section 37, act of 1891, the fact that some of the lot claimants entered the Territory prior to the time fixed therefor should not be considered, but left for subsequent action on the adjustment of individual claims.

16-82

143. In commutation of Oklahoma homestead for a, the purchaser must pay for

the land embraced in the streets and alleys. 21-426

144. Applicant for the right of, under section 22, act of May 2, 1890, must give notice and submit evidence as to his qualifications to perfect title under the homestead law before the plat is approved. 13-700

145. Plat of, submitted under the second proviso to section 22, act of May 2, 1890, should show accurately the exterior boundaries, width of streets, and measurement and location of parks and reservations. 14-505

146. In the survey of a townsite under section 22, act of May 2, 1890, reservations for public purposes are limited to 20 acres in the aggregate. 19-43

147. In case of addition to, under section 22, act of May 2, 1890, the streets should conform to those already established and the surveyor's certificate show such fact. 14-505

148. The party filing plat and application is the proper party to receive notice or action thereon. 14-628

149. The right to the purchase money paid on the commutation of a homestead entry for townsite purposes can only be recognized on behalf of an independent municipal organization. 25-556

150. Evidence of organization to be furnished by a municipality that applies for the purchase price of a, under section 22, act of May 2, 1890 (Oklahoma). 15-335

151. The proof of organization required of a municipality that applies for the proceeds of a cash entry under section 22, act of May 2, 1890, may be accepted as satisfactory where it shows the organization of the village to which the money is payable and the consolidation of said village with another municipality, although the previous organization of the latter is not shown. 18-474

152. The proceeds of a purchase of land for townsite purposes under section 22, act of May 2, 1890, will not be paid to the alleged municipal authorities of a town in the absence of satisfactory proof of the legal incorporation thereof. 19-40

153. Section 22, act of May 2, 1890, contemplates the payment to the town, for school purposes, only such sums as may be paid in commutation of homestead entries

for townsite purposes on the purchase of the land at the rate of \$10 per acre. 20-507

154. The jurisdiction of the Secretary of the Interior over money derived from the sale of land for townsite purposes, under section 22, act of May 2, 1890, terminates when the money is paid to the authorities of the town. 21-133

155. Where an application is made under section 22, act of May 2, 1890, on behalf of an incorporated town for the money paid on a commuted townsite entry, the evidence of the incorporation of the town and its municipal organization may be accepted if the fact of incorporation is shown by a certified copy of the order made by the county board of commissioners and it appears that the officers elected did effect an organization, though certain directory provisions in the statute under which the town was incorporated were not complied with in the manner prescribed. 28-469

156. The act of May 11, 1896, provides an exclusive mode for the disposition of public reservations within vacated townsites and additions thereto, where "patents for the public reservations in such vacated townsite, or additions thereto, have not been issued": First, a preferred right of purchase is accorded the original entryman; second, if such right is not exercised the land then becomes subject to disposition under the laws regulating the disposal of isolated tracts. 30-352

157. Where a patent has not issued for a public reservation in a townsite at the date the townsite is vacated, and the original entryman for such reservation fails to make application therefor within six months from the vacation of the townsite, it thereupon, under the act of May 11, 1896, becomes subject to disposal as an isolated tract under section 2455, and can not be disposed of in any other manner. 34-356

TRAM ROAD.

See RIGHT OF WAY, II.

TRANSFEE.

See ALIENATION; FINAL PROOF, V; PRACTICE, IX, d.

TRESPASS.

See PUBLIC LAND, III; SETTLEMENT, 63-82;
TIMBER TRESPASS.

UMATILLA LANDS.

See INDIAN LANDS, 462-470.

UNITED STATES MINERAL SURVEYOR.

See LAND DEPARTMENT, 9-11, VI.

UNIVERSITY LANDS.

See STATES AND TERRITORIES, 26, 28, 30, 33,
35, 77-78, 86, 89, 92-101, 112-113, 115-
117, 120, 125, 134.

UTAH.

See SCHOOL LAND, 22-23, 47, 73-79; STATES
AND TERRITORIES, 144-149.

WAGON-ROAD GRANT.

See RAILROAD LAND, 6-7.

1. Circular of September 22, 1902, under
acts of June 22, 1874, August 29, 1890,
and July 1, 1902, relative to settlers on.

31-424

2. Circular of May 13, 1904, under act
of April 19, 1904, relative to settlers upon
Wisconsin Central Railroad and The
Dalles Military Wagon Road grants.

32-620

3. Of July 5, 1866, one of quantity, to
be selected within certain limits, and
without selection no right attaches to any
specific tract.

5-650;

10-456; 12-331; 13-51, 61; 20-259

4. Under the wagon-road grant of July
5, 1866, it is the duty of the Secretary of
the Interior to see that the selections
made in satisfaction of the grant are con-
fined to lands described in the granting
act, but as between different sections,
equally subject to selection under said
grant, and the order of withdrawal the
Secretary can not say which shall be
taken.

26-356

5. Does not attach to any specific tract
by definite location or construction of the
road.

10-456; 12-331

6. Within the prescribed limits on each
side of the road, as constructed under the

grant of July 5, 1866, the company has
the right of selection from any of the des-
ignated sections save such as had been
reserved to the United States before the
passage of the granting act; and such
right of selection is not terminated by the
subsequent inclusion of said lands within
the limits of a forest reservation estab-
lished by Executive order.

29-344

7. In a grant of quantity within bound-
aries determined by the construction of
the road (Willamette Valley & Cascade
Mountain Wagon Road) rights do not at-
tach without selection.

5-650

8. Definite location and construction of
road does not effect a withdrawal of the
land under a grant of quantity or cause
it to attach to any specific tract without
selection.

5-650; 10-456

9. While no rights are acquired as
against the Government by settlement on
land withdrawn in aid of a congressional
grant, and entries of lands so reserved
should not be allowed, yet, under the with-
drawal for the benefit of the Willamette
Valley grant, wherein no rights to specific
tracts are acquired prior to selection, and
entries or filings have been allowed, based
on settlement prior to selection, in viola-
tion of said withdrawal, the department
may, in the exercise of its supervisory
authority, require the selection of other
tracts if it appears that the grant can be
fully satisfied from the remaining lands;
and to this end entries or filings of such
character may be suspended to await the
adjustment of the grant. (See 26-357.)

22-654

10. An Executive order of withdrawal
made in aid of a congressional grant,
where there is no statutory prohibition
against such action, rests upon the general
authority of the department, and no
rights, either legal or equitable, can be
acquired by settlement or entry in viola-
tion of such order.

26-356

11. The departmental order, given in
the case of Peter Clemons against the
Willamette Valley company, directing the
cancellation of all entries allowed after
withdrawal, modified.

22-654

12. Executive withdrawal in aid of,
does not take effect on land covered by
valid settlement claim.

10-456; 19-490

13. Mere occupation or use of a body of unsurveyed public land of indefinite area, without intent to acquire title to the particular portion thereof in controversy, is not such an appropriation of that portion as to except it, or the subdivision of which it is a part, from the operation of a.

24-202

14. A mere allegation of settlement, as set forth in a preemption declaratory statement filed after an order of withdrawal, is not sufficient to establish the fact of settlement so as to except the land covered thereby from the operation of the withdrawal.

18-491

15. Lands embraced within the terms of the grant, and covered by the right of Indian occupancy at the date thereof, are not excepted, but pass thereunder subject to such right; and the certification of such lands after the extinguishment of the Indian right of occupancy, is duly authorized.

18-60

16. Lands found within the limits of a technical Indian reservation, at the date when the grant becomes operative, are excepted from said grant; and proceedings should be instituted for the recovery of title where lands occupying such status have been certified or patented under said grant.

18-60

17. The act of March 2, 1889, does not deprive the department of jurisdiction over lands within the grant of July 5, 1866, or bar the issuance of patents for lands excepted from said grant.

10-456; 13-51

18. The suit instituted by the Government under the provisions of the act of March 2, 1889, was for the purpose of determining whether the rights of the company under its grant had been forfeited for failure to comply with the terms thereof, and the decision therein adverse to the Government does not preclude an inquiry on behalf of the United States as to whether a specific tract was actually embraced in said grant.

22-170

19. During pendency of suit under the act of March 2, 1889, no patents will be issued to the company or its assignee.

10-459

20. Filing allowed within limits of indemnity withdrawal for wagon-road grant

subject to the company's right of selection.

1-389

21. A claim based upon settlement and residence existing when the grant of July 2, 1864 (Oregon), became effective excepts the land covered thereby from said grant.

12-362

22. Failure of the company to respond to a settler's notice of intention to submit final proof for land included within a previous Executive withdrawal precludes its subsequent objection to the allowance of the settler's entry. (See 20-259.)

13-61

23. The company is not entitled to special notice of a settler's intention to submit final proof if it has no specific claim of record for the tract claimed by the settler.

13-174; 19-490

24. No rights, either legal or equitable, as against the grantee can be acquired by settlement on or entry of lands withdrawn by Executive authority in aid of a congressional grant, and the failure of a grantee in such case to respond to the published notice of a settler's intention to submit final proof can not operate to defeat the grantee's right of selection.

20-259

25. An indemnity selection, canceled on the relinquishment of the company, may be reinstated for the protection of a purchaser holding under a sale of the land made by the company prior to selection.

18-401

26. A selection made on behalf of a wagon-road company, and thereafter relinquished, can not be reinstated for the benefit of a purchaser from said company, if it appears that said company has already received an amount of land in excess of its grant.

26-440

27. The grant to The Dalles Road by the act of February 25, 1867, is a grant in place, and the rights of the road thereunder attach on definite location.

22-599

28. Under the terms of the grant made by act of February 25, 1867, the occupancy of land at the date when the grant becomes effective does not except the land covered thereby from the operation of the grant.

27-478

29. The grant to the State of Oregon by the act of February 25, 1867, was operative only upon lands within the boundaries

of that State; and lands outside the State, although within 6 miles of the road, do not constitute a valid basis for indemnity.

37-694

30. Lands within the overlapping limits of the Northern Pacific Railroad and The Dalles Military Road, granted to the former company by the act of July 2, 1864, and withdrawn on map of general route for the benefit of said company, were excepted from the subsequent grant to the latter company; and such lands, falling within the terms of the act forfeiting lands opposite the unconstructed portions of the Northern Pacific Road, reverted to the public domain.

17-432

31. As to lands within the limits of that portion of the Northern Pacific grant made by the act of July 2, 1864, and forfeited by the act of September 29, 1890, and also within the limits of the wagon-road grant of February 25, 1867, no right existed under the earlier grant, at the date when the later became effective, that served to defeat the operation thereof.

30-19

32. The act of December 26, 1866, amending the act of July 2, 1864, making a grant to the State of Oregon in aid of a wagon road from Eugene City to the eastern boundary of said State, did not make an additional grant of lands in place, but made a grant of indemnity lands only, under which no rights attach until selection.

32-154

33. Under the provisions of the act of March 3, 1887, proceedings should be instituted for the recovery of lands excepted from a, but erroneously patented.

17-432

34. The departmental order of May 13, 1893, allowing entries upon the unpatented lands in the overlapping limits of the Northern Pacific and Dalles Military, will remain in force.

17-432

35. Action suspended on all entries allowed for lands within the conflicting limits of the grants for The Dalles Military Wagon Road Co., and the Northern Pacific Railroad Co., pending a judicial determination of the status of said lands.

24-332

36. Instructions defining scope of investigation directed to be made by the act of February 26, 1904, with a view to legislation for the relief of settlers on certain lands in Sherman County, State of Oregon,

within that part of the grant made by the act of February 25, 1867, to aid in the construction of what was afterwards known as The Dalles Military Wagon Road, overlapped by the withdrawal made under the grant of July 2, 1864, in aid of the construction of the Northern Pacific Railroad.

32-615

37. Directions given that due notice be served upon the Willamette Valley company that it will be allowed 90 days from date of service of such notice within which to complete its selections, and that at the expiration of such time the order of withdrawal will stand revoked and the lands unselected will be disposed of as other public lands.

18-25

38. Directions given for the restoration of lands withdrawn for the benefit of the grant to the Willamette Valley Road, and not included in pending selections.

26-356

39. An incomplete list of lands claimed by a company, and filed by it for the information of the local officers, who at such time were not in possession of a diagram showing the limits of the grant, is not a waiver of the company's right to lands omitted therefrom, as a list filed for such purpose is not a requirement of the grant.

22-271

40. The terminal limits of a grant are ascertained by drawing a line through the terminus of the road at right angles to the general direction of the last section of the road.

22-271

41. A diagram showing the limits of a, that has stood unquestioned for a long term of years, and under which rights have vested, will not be disturbed.

23-94

42. The act of June 22, 1874, providing for the relinquishment of granted lands and the selection of lands in lieu of those released, while in terms applicable only to railroad grants, is remedial in character, and may be treated as applicable to wagon-road grants. (See 31-174.)

19-591

43. The provisions of the act of June 22, 1874, relating to the adjustment of railroad land grants, can not be applied in the adjustment of conflicting claims to lands within the limits of a wagon-road grant.

31-174

44. An entry of land embraced within the limits of a, is not confirmed by section 1, act of April 21, 1876, for the reason that

when allowed the diagram on file did not show said land to be within the grant, if, by the terms of the grant in fixing the terminus of the road, the fact that said land fell within the grant was apparent.

23-339

45. The right on the part of the Government to institute suit for the recovery of title to lands erroneously certified on account of a, exists independently of the act of March 3, 1887, which is limited to railroad grants, and suit for such purpose may therefore be commenced without the preliminary demand required by said act.

22-170

46. The provisions of the act of March 3, 1887, apply only to land grants for railroad purposes and can not be invoked for the protection of a purchaser under a.

23-579; 30-619

47. The title of a purchaser in good faith from a wagon-road company of lands previously certified thereto, is confirmed, in the absence of adverse claims, although by the true construction of the grant to said company said lands were excepted therefrom; and in such case the only remedy left to the Government is by way of suit against the wagon-road company to recover the value of said lands.

25-390

48. Confirmation of title in a *bona fide* purchaser, of lands previously certified under a, is not defeated by an application to enter tendered long after such certification, nor by the erroneous action of the local office in allowing such application to go of record.

29-82

WAIVER.

See PRACTICE, IV, j, 768, 771, 920-935.

1. Presumed on failure to assert claim.

4-194

2. Of claimed right as preemptor held from subsequent application for the land as homestead.

4-233

3. To be operative, must follow an agreement resting upon a valuable consideration.

4-332

4. Not a, unless the act is such as to estop the party from taking advantage thereof to the injury of another who has acted upon it.

4-332

5. The application of a party for the exercise of a right to which he is not entitled can not be held a, of his actual rights where no one is induced to take action in the premises by reason of said application.

21-26

WARRANT.

See SCRIP.

I. Generally.

II. Virginia Military.

I. Generally.

1. Circular of February 2, 1895, under the act of December 13, 1894.

20-95

2. Circular of February 18, 1896, with respect to location and assignment of military bounty land.

27-218; 31-277

3. Circular of July 6, 1898, with respect to military bounty land, amending rule 11 in circular of February 18, 1896.

27-234; 31-277

4. Circulars of February 21 and March 26, 1908, governing locations of warrants, etc.

36-278, 346

5. The circular of February 21, 1908, requiring publication of notice of all applications to locate scrip, warrants, certificates, soldiers' additional rights, or to make lieu land selections, filed on or after April 1, 1908, merely makes mandatory after that date what theretofore was within the discretionary power of the Land Department to require, and in no wise affects its authority to require notice of applications filed prior to that time.

37-342

6. Instructions of June 9, 1908, under section 12, act of May 29, 1908, relative to warrant and scrip locations.

36-501

7. Instructions of April 30, 1909, under section 12, act of May 29, 1908, relating to warrant and scrip locations.

37-617

8. Not assignable in blank.

4-172

9. Assignments of military bounty land, will not be recognized by the Land Department unless made in accordance with the regulations established by said department governing such assignments.

30-190

10. The Commissioner of the General Land Office may properly determine, in advance of location, whether the assignment of a bounty land has been made

according to the prescribed form and regulations. 28-1

11. Warrants and locations thereof are treated as entireties, and the assignment of part of a location will not be recognized. 36-252

12. On file in the Pension Office to be returned to the General Land Office. 1-1

13. Is canceled by location and issue of patent. 4-172

14. An order of the General Land Office directing the location of a, on a specific tract segregates said tract from the public domain though the local officers fail to enter said order of record as directed. 16-296

15. Application to locate a military bounty, upon a specific tract, duly filed with the Commissioner of the General Land Office, reserves the land specified for the benefit of the applicant. 14-278

16. Loss of, and fees accompanying application to locate a specific tract, by the commissioner, will not defeat the right of the applicant, though on account of said loss no record of the location is made in the local office. 14-278

17. Location inadvertently noted constitutes no appropriation of the land covered thereby. 5-202

18. Military bounty, not certified in advance of offer to locate. 5-178

19. The public has a right to rely on the long-standing ruling of the department that a military bounty land warrant in the hands of a *bona fide* purchaser, without notice, may not be canceled on the ground that it was issued under misapprehension. 3-101

20. Land warrants are not commercial or negotiable paper, and the doctrine applying to innocent holders of commercial paper acquired before maturity has no application thereto; and an assignee of such warrants can acquire no greater interest as against the Government than belonged to the warrantee. 33-544

21. The assignment in blank of a military bounty land warrant, if otherwise regular, merely vests the right of property in the purchaser to whom it is delivered and impliedly authorizes him to fill the blank with his name when he locates or assigns the warrant, but does not make it an instrument negotiable by mere delivery

nor vest title in a mere finder or purloiner, and it is within the power of the Land Department when a warrant so assigned in blank is presented for location to require evidence showing that the holder is in fact the lawful owner thereof. 37-93

22. Commissioner of General Land Office to determine as to the *bona fides* of holders. 1-1

23. Purchaser of, issued in the name of one deceased without heirs or of a fictitious person, not an innocent holder. 1-1

24. Military bounty, in the hands of innocent assignee may not be canceled by the Commissioner of Pensions. 1-1

25. Are receivable only in the form of locations, and not in payment of preemption entries; manner of locating them explained. 2-673

26. In case of dispute as to which one of two applicants for the right of substitution is the real "party in interest," patent may issue in the name of the original locator and be delivered to a trustee named by the parties. 6-375

27. Where the right of substitution is dependent upon a determination as to which one of two applicants is the rightful "party in interest," and that matter can only be settled in the courts, no award of the right will be made. 6-375

28. In the case of a valid entry and objection to the, patent may issue on filing a substitute therefor. 6-375

29. Directions given that where the locator of a military bounty-land warrant fails to submit satisfactory evidence of title to the warrant, and is permitted to make substitution of another warrant to which good title is shown, the warrant first used shall be returned to the locator or other person entitled to make the substitution, with an indorsement thereon, in red ink, showing the attempted location upon the particular tract located, with the name of the locator and a reference to the decision adjudging the evidence of title in the locator incomplete. 37-423

30. No relief for unperfected location where the land has passed from the jurisdiction of the department. 4-172

31. Being lost and no effort made to procure duplicate, the location is canceled in favor of parties holding under the locator. 4-192

32. Deposits, on the substitution of cash for warrants, will be made through the proper local office. 3-146

33. Where a military, is used in payment for land, and said warrant is subsequently canceled on the ground of a fraudulent assignment thereof, a *bona fide* assignee of the entryman may be permitted to substitute cash in lieu of the canceled warrant. 20-341

34. The substitution of cash for a warrant will not be permitted where the only obstacle to confirmation of the location under the warrant is the refusal of the locator or transferee to endeavor to procure the necessary proof to establish the validity of the location. 34-37

35. Where one claiming under a warrant location is permitted to substitute cash for the warrant, he is not thereby entitled to have patent issue in his name, but final certificate and patent will issue in conformity with the original location under which his title is derived. 37-216

36. Location of, issued by the State (California) in satisfaction of the internal-improvement grant confirmed by the act of July 23, 1866. 7-543

37. Issued by the State of Louisiana in satisfaction of the internal-improvement grant afford no basis for the selection of lieu lands. 15-314

38. Military-bounty land, can not be used in commuting a homestead entry in Oklahoma under section 21, act of May 2, 1890. 16-160

39. Military bounty, can only be located on land subject to private entry or used in payment for a settlement claim. 21-47

40. Military bounty land warrants and certificates issued under the act of June 2, 1858, may be located only upon lands subject to private cash entry at the date of the location. 35-399

41. Where the only objection to confirmation of a military bounty land warrant location, made in good faith, is the purely technical one that through inadvertence of the Land Department the land covered thereby was never formally offered at public sale under the act of July 4, 1876, as it should have been, of which fact the locator was ignorant, the location may be referred to the Board of Equitable Adjudication. (See 37-285.) 34-21

42. The general provision in the act of August 30, 1890, limiting the amount of land to which title may be acquired by any one person, under the public land laws, to 320 acres, has no application to the location of warrants held by assignment under the special provisions of section 2414, R. S. 31-399

43. The owners of warrants issued under the act of March 3, 1855, which provides for the location of such warrants upon any lands subject to private entry, have the same rights with reference to the location thereof as they would have had if the act of March 2, 1889, restricting the sale of public lands at private entry to the State of Missouri, had not been passed. (See 35-399.) 31-222

44. The location of a warrant issued prior to the death of the warrantee, by one claiming through assignment from the widow of the warrantee, will not be confirmed in the absence of proof showing that the widow was the sole heir, or was authorized to assign the interests of the other heirs, if any. 34-37

45. A military bounty-land right existing in the claimant at the time of his death, whether the certificate of that right has or has not issued, immediately vests in the next beneficiary in the order of succession fixed by statute and can not in anywise become an asset of the estate of the deceased claimant. 35-627

46. The sale and assignment of a military bounty-land warrant by the administrator of the estate of a deceased claimant, to whom the warrant issued subsequent to the death of the claimant, will not be recognized by the Land Department in the absence of a satisfactory showing that the sale and assignment were made at the instance and for the sole use and benefit of the person or persons designated by statute as entitled to succeed to the rights of the claimant. 35-627

47. Any attempted transfer of title to a military bounty-land warrant, by gift or otherwise, prior to its location, not in compliance with the act of March 22, 1852, requiring assignments of such warrants to be in writing, will not deprive the widow or heirs of the warrantee of the

interest and right to such warrant secured to them by statute. 38-501

48. Where two warrants are erroneously issued upon the same military service, both can not be recognized, and where in such case the warrantee, having both warrants in his possession, assigns one of them, he is estopped thereafter to assert the validity of the other, and an assignee of such invalid warrant has no higher legal right than the warrantee. 34-606

49. The issue of a duplicate warrant under the act of June 23, 1860 (now section 2441, R. S.), in the belief that the original has been lost or destroyed, creates no new liability or obligation on the part of the United States, where the original warrant had been located and satisfied prior to the issue of the duplicate. 34-610

50. After the obligation of the Government has been satisfied with respect to a military bounty land right, the authority of the Commissioner of Pensions as to that claim is at an end; and a duplicate warrant thereafter erroneously issued by him upon such right is an absolute nullity, and no action on the part of the Commissioner of the General Land Office purporting to recognize such duplicate can give it validity, nor can a purchaser thereof be protected, however innocent he may have been as to any infirmity of title, and even though he may have purchased in faith of the recognition given thereto by the Commissioner of the General Land Office. 37-39

51. Where the soldier in whose favor a military bounty land warrant is issued makes affidavit that the warrant has never been received by him, and thereupon a duplicate issues to him, and, with both the original and duplicate in his possession he assigns them to different parties and the duplicate is located and patent issues for the land so located, the obligation of the Government is thereby satisfied and the Land Department is thereafter without authority to recognize any further liability on the part of the Government on account of the original warrant. 35-87

52. The original owner of a military bounty land warrant may convey all his right, title, and interest therein by a blank assignment, and the assignee may convey his right, title, and interest in the same

by mere delivery; but when the warrant is located the assignment must be complete and perfect, showing *prima facie* that the locator is the true owner thereof. 35-453

53. A military bounty land warrant issued to the original claimant and by him regularly assigned in writing, thereby becomes the absolute property of the assignee, free from the conditions attaching to it in the hands of the warrantee, and upon the death of the assignee becomes an asset of his estate, having the same character as other personal assets. 35-630

54. A military bounty land warrant, after assignment, is no longer protected by the provision of section 2436 of the Revised Statutes that the warrant or the land obtained thereby shall not in anywise be affected by or charged with or subject to the payment of any debt or claim incurred by any officer or soldier prior to the issuing of the patent. 35-630

55. The fact that the location of a military bounty land warrant, appearing from the records of the local office to have been regularly made and final certificate issued therefor, was never reported in any of the returns of warrant locations from the local office, and that neither the warrant nor any of the location papers are found in the files of the General Land Office, is not sufficient ground for refusing to recognize the validity of the location, where, owing to the Civil War, the business of the local office was suspended and no returns made by the local officers covering the date the location was made. 35-489

56. Where one claiming ownership of a military bounty land warrant fails to show that his claim rests upon a "deed or instrument in writing" executed by the warrantee in compliance with section 2414, R. S., the Land Department may require full proof as to how, when, and upon what considerations the warrant passed from the warrantee, and is not precluded from requiring such showing by the assumption of jurisdiction of any court to adjudicate the ownership of the warrant in a proceeding wherein the warrantee, or those entitled by law to his succession, were not personally served. 35-310

57. While a full and clear showing will be required as to how, when, and upon what consideration the first stranger claim-

ant of a military bounty land warrant acquired title thereto from the warrantee, his widow, or heirs, as to subsequent transfers reasonable presumptions may be indulged in favor of title by possession of the warrant for a long-continued period, where lapse of time has made the production of positive proof as to the manner and circumstances under which it was acquired practically impossible, unless there are circumstances tending to discredit or cast suspicion upon the title of such holder.

37-607

58. The Land Department having certified to the validity of an assignment in blank of a military bounty land warrant, that question should not be reopened after the warrant has been located by a subsequent assignee and after the land has been purchased upon the certificate issued upon that location; but where there is no evidence of assignment by the warrantee or his heirs and the warrant is claimed under decree of a court which assumed jurisdiction to adjudicate the ownership thereof in a proceeding wherein the warrantee or his heirs were not personally served, the assignee and locator of the warrant may be required to show that he purchased upon the faith of the certificate of the Land Department, and to that end he may be required to show how and from whom he purchased the warrant and whether he obtained it in good faith for a valuable consideration under and by virtue of the blank assignment, and that he is the owner thereof.

36-214

59. Decrees of courts adjudging the title to military bounty land warrants will be accepted as evidence of ownership where the court had jurisdiction of the subject matter and the parties, and should, as a general rule, be required in the absence of a written assignment from the warrantee; but the requirement is not absolute, and the validity of an assignment may be established by such proofs as will create reasonable presumption of ownership in the last holder of the warrant.

38-487

60. As a general rule a decree of a court adjudicating the ownership of a military bounty land warrant will be accepted as sufficient evidence of ownership where it appears that the court had jurisdiction of the parties and the subject matter; but

the mere fact that the court assumed to decree as to such ownership will not prevent the Land Department from inquiring into the jurisdictional facts upon which the court acted.

37-82

61. The Land Department having passed upon the validity of an assignment of a warrant, and recognized the right of the assignee to locate or assign the same, the question as to the regularity of the assignment should not be reopened after the warrant has been located by a subsequent assignee who purchased upon the faith of that action, where no adverse claim is asserted or interest of the Government involved.

37-82

62. Where, however, the decree of the court was accepted and the validity of the assignment recognized in the face of a caveat charging facts showing *prima facie* that the alleged assignment was invalid and that the caveator was the true and lawful owner of the warrant, and without notice to him, the department may require the locator of the warrant, even though he may have purchased upon the faith of the action of the Land Department recognizing the validity of the assignment, to show that title to the warrant passed out of the warrantee by lawful conveyance to those under whom he claims.

37-82

63. All locations or applications to locate military bounty land warrants or certificates issued under the act of June 2, 1858, heretofore made, or locations of such warrants or certificates hereafter made by innocent purchasers who acquired their title after the ruling of the department in the cases of Victor H. Provensal (30 L. D., 616), J. L. Bradford (31 L. D., 132), and Charles P. Maginnis (31 L. D., 222), to the effect that such warrants and certificates might be located on lands subject to such location at the date of the act of March 2, 1859, will be allowed to proceed in accordance with the ruling in said decisions, but all certificates hereafter issued under the act of June 2, 1858, and all bounty land warrants assigned after the date hereof, will be confined in the location thereof to lands subject to location at the date of the location. (See 36-205.)

35-399

64. Departmental decision of January 31, 1907 (35 L. D., 399), modified by elimi-

nating therefrom the paragraph which provides that all locations or applications to locate military bounty land warrants or certificates issued under the act of June 2, 1858, made prior to that decision, or locations of such warrants or certificates thereafter made by innocent purchasers who acquired their title after the ruling of the department in the cases of Victor H. Provensal, J. L. Bradford, and Charles P. Maginnis, would be allowed to proceed in accordance with the ruling in said decisions, it being now held that the department is without power to grant the privileges contemplated by said paragraph. (See 36-205.) 35-609

65. Departmental decision of June 20, 1907, in the case of Lawrence W. Simpson, on review, modified so as to give recognition to all locations of military bounty land warrants or surveyor generals' certificates made prior to that decision, in faith of the ruling of the department in the cases of Victor H. Provensal, J. L. Bradford, and Charles P. Maginnis, or under the saving paragraph in the decision in the Simpson case on appeal, where the lands located were not at the time of the location reserved or appropriated to any particular purpose and with respect to which no question as to the right under the location is raised except that the lands are without the State of Missouri. 36-205

66. The department declines to recognize any right on the part of purchasers of military bounty land warrants or surveyor generals' certificates to locate them upon lands not subject to such location under departmental decision in the case of Lawrence W. Simpson, merely because the warrants or certificates were purchased prior to that decision upon faith of the rulings of the department in the cases of Victor H. Provensal, J. L. Bradford, and Charles P. Maginnis. 37-533

67. Only locations made upon lands which were subject to private cash entry at the time of the passage of the act of March 2, 1889, are recognized and protected by the ruling in the Roy McDonald case and validated by section 12 of the act of May 29, 1908. 37-23

II. Virginia Military.

68. The act of May 27, 1880, cures no defects originating under the act of March 3, 1855. 1-3, 11

69. Locations of Virginia military, surveyed and returned before March 3, 1857, recognized. 1-3, 11, 17

70. Patents provided by the act of May 27, 1880, for certain entries made under Virginia military. 1-3, 5, 11, 17

71. History of legislation with respect to location of, in Virginia military district, Ohio. 1-5, 11

72. The third section of the act of May 27, 1880, in effect a new grant. 1-5, 11

73. Section 3, act of May 27, 1880, extends the time for the survey of warrant locations in the Virginia military district of Ohio where the entry was made prior to January 1, 1852, and provides for the issuance of patent thereon, and rights acquired by compliance with said statutes are not divested by the act of August 7, 1882. 13-584

74. The grant of one-third additional bounty by the State act of October, 1780, was intended only for the benefit of those officers for whom a provision for bounty land had been previously made. 2-12

75. A major general was entitled to 15,000 acres under the State act of October, 1780, and to one-sixth additional for each year's service beyond the term of 6 years, under the act of May, 1782. 2-14

76. Warrants issued in June, 1783, to amount of 17,500 acres, for seven years' service as major general, ending May 30, 1783, were in full satisfaction of the claim. 2-9

77. The decisions of the officers of the State charged with the duty of issuing the warrants are final, and bind the parties and their privies. 2-13

78. A claim for the issue of scrip for 5,833 $\frac{1}{2}$ acres additional founded on a warrant issued in 1832 will not be entertained. 2-14

79. Claims allowed by Virginia prior to March 1, 1852, entitled to recognition without respect to the time when the warrant issued. 5-531

80. Certain lands reserved for location of Virginia scrip. 5-533

81. The attempted location of a Virginia military, and sale of the tract by the locator does not vest in the purchaser nor in his grantees the right to receive scrip under act of August 31, 1852, in lieu of said warrant. 15-383

82. The act of the Virginia State legislature directing the delivery of certain military warrants to John Milliner does not operate to validate said warrants or make them subject to exchange for scrip if they were not valid subsisting claims allowed prior to March 1, 1852. 15-127

83. Assignment of all interest in the location of a Virginia military, and the survey thereunder executed after abandonment of such location and survey and subsequent to January 1, 1852, does not vest in the assignee ownership of the warrant, so as to entitle him to receive Revolutionary scrip in exchange therefor. 16-453

84. Warrants which at the date of the act of August 31, 1852, had been located, but title under the location not perfected because of laches of the locator or his assignee, were not "unsatisfied and outstanding" within the meaning of that act, and the issuance of scrip in lieu thereof under that act is unauthorized. 37-198

85. Where, however, scrip was issued under that act in lieu of such warrants, which has been in good faith purchased upon faith of the action of the department certifying to the validity of the right represented thereby, and there are no adverse claims to be affected, the scrip will be recognized in the hands of innocent purchasers. 37-198

86. Under the provisions of the act of March 3, 1899, all persons owning or holding Virginia military bounty-land warrants who failed to present their claims and surrender their warrants within one year from the passage of that act are forever barred from asserting any claim or right to scrip therefor under the act of August 31, 1852. 35-96

87. The jurisdiction to determine whether a military bounty-land warrant is outstanding and unsatisfied, and whether the owner thereof is entitled to scrip therefor under the act of August 31, 1852, rests

solely with that branch of the executive department of the Government charged with the duty of disposing of the public lands. 35-96

88. The act of February 18, 1871, ceding to the State of Ohio the residue of lands in the Virginia military district, as construed by the act of May 27, 1880, had no reference to lands included in any survey or entry within said district founded upon a military warrant upon continental establishment, and any infirmities in title based upon or deducible from entry of a tract of land within said district founded upon such a warrant were cured by the act of August 7, 1882, where the party claiming in good faith under such title had been in continuous possession for 20 years prior thereto, and there therefore exists no right on the part of one in whom title was thus confirmed to have scrip issued to him, under the act of August 31, 1852, on the ground that the location of the warrant upon which the title so confirmed to him was founded was invalid and that the warrant for that reason has never been satisfied. 35-96

WASHINGTON.

See SCHOOL LAND, 10, 49, 100, 169, 194, 226, 236-244, 272-273, 297; STATES AND TERRITORIES, 150-155.

WATER RIGHT.

See MINING CLAIM, 911-915; RECLAMATION, IV; RIGHT OF WAY, V.

1. Application for a water right under guise of a placer claim will be rejected. 2-774; 3-536

2. Acquired by priority of appropriation and protected under sections 2339 and 2340, R. S. 1-27; 5-191

3. Title to water used for reclamation of desert land must be by *bona fide* prior appropriation. 1-27

4. Acquired by appropriation relates back to the beginning of work thereunder if such work is prosecuted with reasonable diligence. 9-6

5. The sale of a, confers upon the purchaser all the rights acquired by the vendor through a prior appropriation thereof. 9-6

6. An adverse claim as against an alleged prior appropriation will not be recognized if it appears that undisturbed possession has been maintained under such appropriation for a period sufficient to establish title by prescription. 9-6

7. The Land Department has authority to determine questions pertaining to the appropriation of water for the reclamation of desert land. 9-6

8. There is no authority to make such executive withdrawal of public lands in a State as will reserve the waters of a stream flowing over the same from appropriation under the laws of the State, or will in any manner interfere with its laws relating to the control, appropriation, use, or distribution of water. 32-254

9. Congress has control over navigable streams and the waters thereof, and no claim based upon appropriation of such waters for irrigation purposes, made without the sanction of Congress, should be recognized by the Secretary of the Interior as valid. 33-391

10. Sections 2339 and 2340, R. S., do not authorize the department to reserve land for reservoir purposes. 10-171

11. Not necessarily in conflict with mill-site claims, as both may be located on the same land. 5-190

12. Not patentable as such. 5-191

WATER FRONTAGE.

See ALASKAN LAND, 100-101, 105, 109; SURVEY, 98-124, 216-226.

WISCONSIN.

See SCHOOL LAND, 71; SWAMP LAND, 14-15.

WITHDRAWAL.

See COAL LAND, IV; POWER SITES; PUBLIC LAND, 15-19; RAILROAD GRANT, V; RECLAMATION, II; RESERVATION; RIGHT OF WAY, 142; TIMBER AND STONE ACT, 58.

1. An order by the Land Department withdrawing public lands from entry or other disposition is operative, unless otherwise limited, from the time it is made. 20-32; 21-134; 22-196; 33-677

2. May be made for present public uses, or disposition in a special way, or in anticipation of future uses or disposal. 31-193

3. Instructions of March 6, 1911, under act of June 25, 1910, authorizing the President to make temporary withdrawals. 39-544

4. The Secretary of the Interior has authority to make temporary withdrawals of public lands for the purpose of making examination thereof to determine the propriety of embracing them within the limits of a national forest. 37-277

5. A withdrawal erroneously made to include lands not intended to be embraced therein is nevertheless effective as to such lands, and unless and until released from withdrawal no rights inconsistent therewith will be recognized as attaching to any of the land actually withdrawn. 36-271

6. Where lands which have been withdrawn from all disposition are restored to entry, no application will be received or any rights recognized as initiated by the tender of an application for any such lands until the order of restoration is received at the local office. 38-146; 40-415

7. A protest against a nonmineral selection, charging that the lands are mineral in character, on which a hearing was held prior to any withdrawal or classification of the land as oil, should be disposed of on the proof submitted at such hearing, and a subsequent withdrawal or classification of the lands as oil may not properly be considered in passing upon that protest. 40-321

8. The purpose of the proviso to section 2 of the act of June 25, 1910, was to protect *bona fide* occupants or claimants of oil or gas-bearing lands, who were in diligent prosecution of work leading to the discovery of oil or gas, against any withdrawal of the land as oil, and has no bearing whatever upon the question of the measure of proof necessary to sustain a protest, charging that the lands are mineral in character, against a nonmineral selection filed prior to the withdrawal. 40-321

9. The act of June 25, 1910, in so far as it authorizes withdrawal of public lands for classification as to coal deposits, must be construed as *in pari materia* with the act of March 3, 1909, providing for the issuance of restricted pat-

ents to agricultural entrymen of lands subsequently classified, claimed, or reported as valuable for coal, and with the act of June 22, 1910, providing for agricultural entries of coal lands; and so construed, a nonmineral application initiated in good faith prior to the passage of the act of June 22, 1910, is not avoided by a subsequent withdrawal made under the act of June 25, 1910, but the entryman must take a restricted patent. 40-33

WITNESSES.

See EVIDENCE, I; FINAL PROOF, IV; PRACTICE, 572-582.

1. Circular of March 20, 1903, under act of January 31, 1903, relative to compulsory attendance of. 32-132

2. Circular of June 27, 1904, amending circular of March 20, 1903, under act of January 31, 1903, concerning compulsory attendance of. 33-58

3. Instructions of March 22, 1911, concerning compulsory attendance of. 39-601

4. Circular under act of May 27, 1908, relative to fees and mileage. 36-473

WORDS AND PHRASES CONSTRUED.

See STATUTES, 50-55.

("Actual Settler." See 82-85 hereof.)

1. "Adverse claim" in the act of April 7, 1896, means *valid* adverse claim. 23-582

2. "Agricultural lands" in act of July 2, 1864. 39-314

3. To reach the obvious purpose, "and" is construed "or." 5-81

4. "And" and "or" convertible terms, as the sense of the statute may require. 5-523

5. "As near as practicable" in section 2331, R. S., means as nearly as is reasonably practicable. 2-764; 6-227

6. "Casualty" in section 3, act of March 2, 1889, construed. 20-21; 22-716

7. "Children" in section 2162, R. S., is used in its natural sense and is not qualified by reference to minority. 2-611

8. "Citizen" in act of March 3, 1887. 38-246

9. "Citizen" in section 5, act of March 3, 1887, construed to mean a "corpora-

tion" organized under the laws of a State. (See 22-1 and 558.) 19-141

10. "Claim against the United States" in section 190, R. S., means a money demand, and does not extend to one who appears on behalf of an applicant for a tract of public land. 17-216; 33-137

11. "Claimant" in section 2331, R. S., means locator. 38-31

12. "Compact" means as nearly as possible in square form. 35-585

13. "Day" in section 3, act of June 20, 1890, opening certain reservoir lands, is not restricted to the "business day," but contemplates the calendar day of 24 hours. 15-302

14. "Disposed of" in the proviso to section 1, act of March 12, 1860, means sold and title alienated. 2-641

15. "Enter" in section 8, act of March 3, 1891, construed. 20-67

16. "Entry" is a contract by the Government with the entryman to convey title. 34-377, 653; 36-279

17. "Entry" in repayment act of June 16, 1880, includes a selection. 2-681

18. "Erroneously allowed" in the act of June 16, 1880, construed. 2-694; 7-509; 8-423; 9-103, 643; 14-514

19. "Extraordinary emergency" in act of August 1, 1892. 37-32

20. "Gravel" in nonmineral homestead affidavit means gravel bearing gold or other valuable metallic substance. 39-313

21. "Foreigner" in section 2134, R. S., means an alien—one born out of the United States and not naturalized. 36-195

22. "Homestead laws" used in a generic sense in section 2, act of June 15, 1880. 20-528

23. "Who has under existing laws taken a homestead" in the act of March 3, 1879, construed. 1-24

24. "Homestead laws" considered as a generic term embracing other settlement laws. 1-71; 5-591; 6-45

25. "Had the benefit of the homestead law" held to apply to a party who had made an entry and acquired title thereunder. 10-634

26. "Honorably discharged" within meaning of section 2304, R. S. 38-164

27. "Known mines" construed. 7-63

28. "Land district" construed. 18-601

29. "Lawful filing" in proclamations establishing forest reserves. 28-282; 32-51; 37-2
30. A mortgagee is not a "legal representative" within meaning of act of March 26, 1908. 38-151
31. "Located" in the act of July 4, 1884, means "settled." 29-277
32. "Minimum price" in section 2387, R. S., is the price fixed by law. 29-503
33. "Occupant" means one entitled to "use and possession." 28-537
34. "Own and occupy" in section 2, act of April 28, 1904 (Kinkaid Act). 35-430; 39-19
35. "Permanent forest reserves" in act of June 11, 1906. 39-411, 414
36. "Person" includes corporation and "entry" includes a selection under section 2, act of June 16, 1880 (repayments). 2-681
37. "Person" in act of March 3, 1909, includes State. 38-247
38. "Preference right" under public-land laws means *exclusive* right. 36-128
39. A desert entryman is not a "proprietor" within meaning of section 2289, R. S. 38-153, 201
40. "Public lands" are such as are subject to sale or disposal under general laws. 5-712; 10-367
41. "Public lands" in section 24, act of March 3, 1891. 36-345
42. "Public lands adjacent to the line of said road." 6-449; 7-541
43. "Public lands adjacent thereto" in the act of June 4, 1897. 24-588; 25-140
44. "Resident" in act of June 3, 1878, authorizing cutting of timber, does not include a foreign corporation. 39-80
45. "Actual residence" in act of August 15, 1894 (Siletz lands). 38-180
46. Under sections 2401, 2402, 2403, R. S., and act of March 3, 1879, corporations can not be considered as "residing" or being "settlers" in a township, etc. 1-308
47. "Sales of public lands" means cash sales only. 2-696
48. "Section" in section 2, act of March 3, 1891, amending the desert-land law, the same as "provision." (See 22-450.) 19-85
49. "Seized in fee simple" in section 20, act of May 2, 1890. 21-505
50. "Selection." 38-247
51. A selection is a "lawful filing." 32-51
52. An "actual settler" under the act of May 28, 1880, is one who goes upon the land with the *bona fide* intent of making it his home under the settlement laws and does some act indicative of such intent. 7-278; 8-173; 10-36
53. "Actual settler" in section 2382, R. S., means actual resident. 2-337, 628
54. "Actual settlers in good faith" under the act of September 29, 1890, are those who have gone upon and occupied land in the *bona fide* intention of making it a home, and done some act in execution of such intention. 17-386
55. "Actual settlers" in Carey Act means persons actually residing on the land. 36-509
56. "May have settled," etc., in section 3, act of September 29, 1890, requires a showing of residence. 17-498
57. "Temporary forest reserves" in act of June 11, 1906. 39-411, 414
58. "Two years" in the proviso to section 7, act of March 3, 1891, considered, and rule announced as to the computation of such period. 25-157
59. "Until" in act of February 13, 1911, extending time for residence "until" May 15, 1911. 40-547

WYOMING.

See SCHOOL LAND, 7-8, 94, 245, 269; STATES AND TERRITORIES, 156-157.



